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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 323

NORTH LARAMIE LAND COMPANY, PLAINTIFF IN ERROR,

vs.

ALBERT E. HOFFMAN, ULYSSIS S. JONES, GEORGE S. MARTIN, INDIVIDUALLY, ETC., ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WYOMING

FILED MARCH 12, 1924

(30,190)

United States Pacific

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[fol. 1] [Caption omitted]

[fol. 2] IN THE

SUPREME COURT OF THE STATE OF WYOMING

NORTH LARAMIE LAND COMPANY, a Corporation, Plaintiff in Error (Plaintiff Below),

vs.

ALBERT E. HOFFMAN, ULYSSIS S. JONES, GEORGE S. MARTIN, Individually and as Constituting the Board of County Commissioners of Platte County, Wyoming, and the Board of County Commissioners of Platte County, Wyoming, Defendants in Error (Defendants Below).

In Error to the District Court of the First Judicial District, Sitting Within and for the County of Platte

PETITION IN ERROR—Filed January 24, 1919

Comes now the above named plaintiff in error, North Laramie Land Company, a corporation, and alleges that at the February Term, 1918, of the District Court of the First Judicial District sitting within and for the County of Platte, in the State of Wyoming, said defendants in error, Albert E. Hoffman, Ulyssis S. Jones, George S. Martin, individually and as constituting the Board of County Commis-[fol. 3] sioners of Platte County, Wyoming, and the Board of County Commissioners of Platte County, Wyoming, recovered a judgment in said court against the plaintiff in error herein, when and whereby the certain temporary injunction theretofore granted by C. D. McDougall, Court Commissioner, against the defendants in error on the 10th day of December, 1917, was vacated and dissolved, and when and whereby the said defendants in error recovered against plaintiff in error their costs, and that an application for the original papers and a transcript of the journal entries in said cause are filed herewith. And the plaintiff in error respectfully shows to the court that there was error in the said record and proceedings of said District Court of Platte County, as follows, towit:

1. That said District Court erred in refusing to admit certain evidence offered by plaintiff in error.

2. That said District Court erred in admitting over the objection of plaintiff in error certain evidence offered by the defendants in error.

[fol. 4] 3. That said decision and judgment of said District Court is against the weight of evidence.

4. That said decision and judgment of said District Court is not sustained by sufficient evidence.

5. That said decision and judgment of said District Court is contrary to law.

6. That said District Court erred in overruling plaintiff's in error motion for a new trial filed in said action.

7. That said District Court erred in vacating and dissolving the temporary injunction theretofore granted by C. D. McDougall, Court Commissioner, against defendants in error, on the 10th day of December, 1917, because the evidence adduced on the trial of said action in said District Court clearly showed that the defendants, individually and as Board of County Commissioners, were acting without jurisdiction over the person or subject matter of the proceedings had by them, and to restrain which the petition of plaintiff in error was filed.

8. That said District Court erred in rendering its judgment as aforesaid against the plaintiff in error, because Chapter 168 of the Wyoming Compiled Statutes of 1910, and all sections thereof, particularly Sections 2530 and 2531, being Sections 18 and 19 of [fol. 5] Chapter 69 of the Laws of 1895, under which the defendants in error, individully and as the Board of County Commissioners, were proceeding, are in violation and controvention of Sections 6, 7 and 33 of Article I of the Constitution of the State of Wyoming, and in violation and contravention of the Fourteenth Amendment to the Constitution of the United States of America.

9. That said District Court erred in rendering said judgment as aforesaid against said plaintiff in error, in that all the acts and proceedings of the defendants in error, individually and as the Board of County Commissioners, against the plaintiff in error and its property were unlawful, void and in violation and contravention of Sections 6, 7 and 33 of Article I of the Constitution of the State of Wyoming, and in violation and contravention of the Fourteenth Amendment of the Constitution of the United States of America, and constituted taking plaintiff's property without just compensation and without due process of law.

10. That the said District Court erred in rendering the judgment aforesaid against plaintiff in error, in that its judgment was in violation and contravention of Sections 6, 7 and 33 of Article I of the Constitution of the State of Wyoming, and in violation and con- [fol. 6] travention of the Fourteenth Amendment of the Constitution of the United States of America, and constituted taking plaintiff's in error property without just compensation and without due process of law.

11. That said District Court erred in finding that the Public Road Act under which said defendants were proceeding was valid and legal and not in violation of any provisions of the State or Federal Constitution.

12. That the said District Court erred in finding that the defendants as such Board of County Commissioners had jurisdiction of the

subject matter of the proposed road through the land of the North Laramie Land Company.

13. That the said District Court erred in finding that the petition on which the proceedings before said defendants as such Board of County Commissioners were based was in compliance with the statutes in such cases made and provided and was signed by a sufficient number of electors as required by the statutes in such cases made and provided.

14. That the said District Court erred in finding that the plaintiff, North Laramie Land Company, had failed to file its objections and claims for damages before the defendants acting as such Board of County Commissioners in the proceedings then pending in the time [fol. 7] fixed by the notice published as of May 8, 1917, in that the defendants acting as the Board of County Commissioners having once fixed the time for the filing of such objections as of noon on the 7th day of June, 1917, even if said Board had authority to extend the time for the filing of such objections and claims for damages beyond said June 7, 1917, the Chairman of such Board had no such authority, and therefore, although the plaintiff in reliance upon said extension of time by said Chairman of the Board of County Commissioners, did not file its objections and claims for damages before noon on the 7th of June, 1917, and although it did file same within the time fixed by said Chairman of the Board of County Commissioners in his order of extension, it had lost its right to file such objections or claims for damages, and was therefore not entitled to be heard by said defendants acting as said Board of County Commissioners upon the objections and claims for damages so filed by it, and therefore said plaintiff is not entitled to any relief herein. That the claim filed was not for any definite amount of damages and not in other ways in compliance with the laws of the State of Wyoming and was not in such form that said Board could legally allow same, [fol. 8] in that it did not state the amount of damages claimed.

15. That said District Court erred in finding that the acts and proceedings of said defendants as such Board of County Commissioners did not constitute taking the plaintiff's property without due process of law and that the acts of said defendants as such Board of County Commissioners did not constitute depriving the plaintiff of its property without just compensation.

Wherefore, plaintiff in error respectfully prays that said judgment heretofore rendered in said District Court of Platte County, Wyoming, in the matter of North Laramie Land Company, a corporation, plaintiff vs. Albert E. Hoffman, Ulysis S. Jones, George S. Martin, individually and as constituting the Board of County Commissioners of Platte County, Wyoming, and the Board of County Commissioners of Platte County, Wyoming, defendants, may be reversed, and that it may recover from said defendants in error its costs and expenses in this action incurred.

William A. Riner, Pam & Hurd, Attorneys for Plaintiff in Error.

[fols. 9 & 10] IN SUPREME COURT OF WYOMING

PRÆCIPE FOR SUMMONS—Filed Jan. 24, 1919

[File endorsement omitted.]

[fol. 11] IN THE SUPREME COURT OF WYOMING

SUMMONS AND SHERIFF'S RETURN—Filed January 28, 1919

To the Sheriff of the County of Laramie:

You are hereby commanded to notify Albert E. Hoffman, Ulyssis S. Jones, George S. Martin, individually and as constituting the Board of County Commissioners of Platte County, Wyoming, and the Board of County Commissioners of Platte County, defendants in error, that North Laramie Land Company, a corporation, plaintiff in error, has filed a petition in error against them in the office of the Clerk of the Supreme Court of the State of Wyoming, asking the reversal of a judgment rendered in the District Court of the County of Platte at the February 1918 term of said District Court, in a cause wherein North Laramie Land Company, a corporation, was plaintiff, and said Albert E. Hoffman et al. were defendants, and that the said defendants in error are required to comply with the rules of said Supreme Court and to appear before the said Supreme Court, as provided by law and the said rules, to do and receive what the said Supreme Court shall order in the premises.

You will make due return of this summons in error on or before the 24th day of February, A. D., 1919.

Witness the Honorable Cyrus Beard, Chief Justice of said Supreme Court, and the seal thereof, at Cheyenne, this 24th day of January, A. D., 1919.

William H. Kelly, Clerk. (Seal of Supreme Court.)

[fols. 12-23] I hereby certify that I served the within summons in error at the county aforesaid on the 27th day of January A. D., 1919 by delivering a certified copy thereof, together with all the endorsement thereon, to Avery Haggard, one of the attorneys of record in the original case, personally as required by law.

P. H. Hayes, Sheriff Laramie County.

Fees:

Service and Return, Paid	$1.50
Mileage	.15
Total	$1.65

[File endorsement omitted.]

[fol. 24] IN DISTRICT COURT OF PLATTE COUNTY

[Title omitted]

ORDER OF SUPREME COURT TO TRANSMIT ORIGINAL PAPER AND SERVICE—Filed March 29, 1919

I hereby accept service of the within order this 28 day of March A. D. 1919.

Harvey Corbridge, Clerk of the District Court of the County of ——.

[File endorsement omitted.]

IN THE SUPREME COURT OF WYOMING

To the Clerk of the District Court of the County of Platte:

Whereas, North Laramie Land Company, a corporation, has filed a petition in error in the Supreme Court of the State of Wyoming, against Albert E. Hoffman, Ulyssis S. Jones, George S. Martin, individually and as constituting the Board of County Commissioners of Platte County, Wyoming, and the Board of County Commissioners of Platte County, Wyoming, for the review of a judgment rendered in the District Court of the County of Platte at the February 1918 term of said District Court on the — day of —, A. D. 19—, in a case wherein said North Laramie Land Company was plaintiff and said Albert E. Hoffman et al. were defendants and has applied to said Supreme Court for an order directing the Clerk of the District Court from which said appeal is taken, for the following original papers and duly authenticated transcript of the following mentioned journal entries of record.

You are, therefore, hereby directed forthwith to transmit to the said Supreme Court of Wyoming the following original papers in the cause wherein said North Laramie Land Company, was plaintiff, and said Albert E. Hoffman et al. were defendants, heretofore pending in the District Court of said County of Platte and in which cause the above mentioned judgment was rendered as aforesaid, to-wit: Original petition filed by the plaintiff, together with all exhibits attached; Original answer to defendants, with all exhibits attached original reply with all exhibits attached: Original of the certain stipulation entered into between plaintiff and defendants on the 9th day of May, 1918; Original motion for new trial filed by plaintiff: Original bill of exceptions in said action, with the original of all exhibits offered in evidence upon the trial thereof. Also a duly authenticated transcript of the following journal entries in said cause: The temporary restraining order entered by Commissioner C. D. McDougall on the 10th day of December, 1917; the order of the court overruling each and every of the several objections made

by the plaintiff to the admissibility of testimony offered by the defendants; The decision of the District Court and direction that a judgment should be drawn up in accordance with said decision; The order of the District Court extending the time for plaintiff to file its motion for a new trial until June 9, 1918; The order of the District Court overruling plaintiff's motion for a new trial; The findings and judgment of the District Court; The order showing the presentation for and allowance, signing, sealing and settling of plaintiff's bill of exceptions, together with plaintiff's bill of exceptions allowed, signed, sealed and settled and filed with and made a part of the record of said action.

Witness the Honorable Cyrus Beard, Chief Justice of said Supreme Court, and the seal thereof, at Cheyenne, this 24th day of January, A. D., 1919.

William H. Kelly, Clerk. (Seal Supreme Court of the State of Wyoming.)

[fol. 25] IN THE DISTRICT COURT, FIRST JUDICIAL DISTRICT

NORTH LARAMIE LAND COMPANY, a Corporation, Plaintiff,

vs.

ALBERT E. HOFFMAN, ULYSSIS S. JONES, GEORGE S. MARTIN, Individually and as Constituting the Board of County Commissioners of Platte County, Wyoming, and the Board of County Commissioners of Platte County, Wyoming, Defendants.

PETITION

Comes now the plaintiff in the above entitled cause and for cause of action against the defendants, and each of them, respectfully shows to the court and alleges:

[fol. 26] 1. That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Wyoming.

2. That the defendants, Albert E. Hoffman, Ulyssis S. Jones and George S. Martin, are each members of and constitute the Board of County Commissioners of Platte County, Wyoming.

3. That prior to, upon and ever since the 21st day of March, A. D. 1917, the plaintiff was and is the owner of the land over which the defendants, as such Board of County Commissioners of Platte County, propose to establish and run a certain road described as follows, to-wit:

Beginning at a point on the East boundary line of Section 27, T. 25 N. R. 68 W. 300 ft. South of the E. ¼ cor. of said Section, thence N. 59°-00′ W. 705 ft.; thence N. 27°-15′ W. 120 ft.; thence N. 65°-00′ E. 700 ft.; thence N. 4°-30′ E. 840 ft.; thence N. 23°-45′ W. 190 ft. to the East boundary line of said Section 27;

thence N. on said East boundary line of said section 1110 ft. to the N. E. cor. of said Section 27; thence N. on East boundary line of section 22-T. 25 N. R. 68 W. one half mile to the E. ¼ cor. said Section 22; thence North on said boundary line 1820 ft.; thence N. 36°-15′ E. 400 ft.; thence N. 3°-30′ W. 380 ft., thence N. 39°-15′ W. 300 ft. to a point on the East boundary line of Section 15 T. 25 N. R. 68 W. 115 ft. North of the S. E. cor. said Section 15; thence N. on East boundary line of said Section 15 2525 ft. to the E. ¼ cor. of said Section 15, thence N. on said boundary line one fourth mile to the N. E. cor. S. E. ¼ N. E. ¼ said Section 15; thence West on North boundary line of said forty one fourth mile to the N. W. cor. of said forty; thence North on forty line three fourths mile to the N. E. cor. N. W. ¼ S. E. ¼ Section 10 T. 25 N. R. 68 W.; thence West on the South side of the North boundary line of said forty one fourth mile to the N. W. cor. of said forty; thence N. on the W. boundary line of the S. W. ¼ N. E. ¼ said Section 10 one fourth mile to the N. W. cor. of said forty; thence N. 11° 45′ E. 1490 ft.; thence N. 2°-00′ W. 1270 ft.; thence N. 54-30′ W. 3480 [fol. 27] ft. to the West boundary line of Section 3, T. 25 N. R. 68 W. thence N. of said boundary line of said Section 1820 ft. to the N. W. cor. said Section 3; thence North on Section line five miles to the S. E. cor. Section 4, T. 26 N. R. 68W.; thence W. on South boundary line of Section 4, one mile to the S. W. cor. Section 4, thence North on the West boundary line of said Section 4 one mile to the N. W. cor. of said Section 4 and intersect County Road No. 114.

and prior to, upon and ever since the 21st day of March A. D. 1917, the plaintiff was and is the owner of a great quantity of land on either side of said proposed road, all of which land, including the land over which said road is proposed to be located, is of great value.

4. That on the 21st day of March, A. D. 1917, one John Mullin filed with the County Clerk of Platte County, Wyoming, a certain petition asking that a public road be established, commencing at a point described in said petition and thence running North with certain meanders through and over the lands of the plaintiff, said road to be sixty feet wide. That by the provisions of Section 1 of Chapter 73 of an Act to Amend and Re-enact Sections 2516 and 2525 [fol. 28] of the Wyoming Compiled Statutes of 1910, said petition was required to be signed by ten or more electors of the County of Platte residing within fifteen miles of the road proposed to be established; that, however, and notwithstanding said provisions, said petition so filed by said John Mullin as aforesaid was not signed by ten or more electors of the County of Platte residing within fifteen miles of the road proposed to be established as aforesaid, but bore the signature of but one person, towit, John Mullin; that by reason thereof, said petition was defective, unlawful and void, and conferred no jurisdiction upon said defendants to seize and appropriate the lands of the plaintiff for use as a public road, and all acts and proceedings of the defendants thereafter were, are and will be, unlawful and void.

5. That thereafter, on, towit, the 6th day of April, A. D. 1917, the defendant Albert E. Hoffman, pretending to act for the defendant Board of County Commissioners of Platte County, appointed himself, the said Albert E. Hoffman, as a viewer of said proposed road and directed himself to qualify under oath to faithfully and impartially perform his duties in the premises and to proceed to view said proposed road from said point of beginning, to and over plaintiff's lands, and to the point of terminus, and to take into consideration the convenience and inconvenience and expense, which will result to in- [fol. 28½] dividuals as well as to the public if said road shall be located, and to make a report in writing stating his opinion in favor of or -gainst the location of said road and his reasons for such opinion, and to include in or return with said report a definite description of the line and direction of said road as viewed by him, and to file said report, together with a correct plat he may make of said road, together with the order appointing him as such viewer, with the County Clerk of Platte County, on or before the 3rd day of May, A. D. 1917. That by Section 2518 of the Wyoming Compiled Statutes of 1910, it was and is provided among other things that "upon the filing of such petition the Board of County Commissioners, at a regular or special meeting, or the Chairman of said Board if in his judgment an emergency exists, shall appoint a suitable and disinterested elector of the County, who may be a member of the Board of County Commissioners, to examine into the expediency of said proposed road, alteration or vacation thereof, and to report immediately."

The said appointment of said defendant Albert E. Hoffman as aforesaid was unlawful and void; that no emergency did in fact nor was shown to exist, and said defendant Albert E. Hoffman, as Chairman of said defendant Board of County Commissioners of Platte [fol. 29] County, was without authority to appoint himself, the said Albert E. Hoffman, as such viewer of said proposed road; that said pretended appointment of said defendant Albert E. Hoffman as such viewer could only have been made by defendant, the Board of County Commissioners of Platte County, at its regular or special meeting.

6. That by the provisions of Section 2521 of the Wyoming Compiled Statutes of 1910, said defendant Albert E. Hoffman as such viewer was required to report in writing to the defendant, Board of County Commissioners of Platte County, whether or not in his judgment said proposed road was and is practicable and ought or ought not to be established, stating the probable expense of the same, including damages to the property owners along the line thereof, the benefits thereto and such other matters therein as shall enable the said defendant, Board of County Commissioners of Platte County, to act understandingly in the premises.

That thereafter and contrary to said statutes, said pretended viewer, Albert E. Hoffman, failed and neglected to file a report as provided by said Section of the statures of the State of Wyoming; that instead of reporting as to whether or not in his judgment said proposed road

was and is practicable and ought or ought not to be established, said [fol. 30] defendant, Albert E. Hoffman, reported as follows:

"I sure recommend that the road be established as the *pertition* called for."

That instead of reporting whether the road would be beneficial to the property owners along the line thereof, said defendant, Albert E. Hoffman, reported as follows:

"It is a benefit to a great many people and should be established."

That instead of finding the extent of damages to property owners along the line of said road, said defendant, Albert E. Hoffman, reported as follows:

"There should be three bridges made and some work done on the hills each side of the two Rivers. The expince of said road would cost about $5,000."

That said defendant, Albert E. Hoffman, as such pretended viewer, did not find and report upon the damage to property owners along the line of said proposed road, as by said statutes required. That by reason thereof, said pretended report, so filed by said defendant, Albert E. Hoffman, as such pretended viewer, was and is unlawful, void and contrary to the statutes of the State of Wyoming in such cases made and provided.

7. That there has been filed with the County Clerk of Platte County what purports to be a description of a road described therein as the "Mullin Road," and a pretended plat of a proposed road across the [fol. 31] lands of plaintiff. By whom this description and plat were prepared or filed, or when filed, does not appear; nor does it appear that said description or said "Mullin Road", or said plat, is in connection with, or in fact is, the road recommended by said defendant and pretended viewer Albert E. Hoffman, in his pretended report, as mentioned in Paragraph Six hereof.

8. That, thereafter, on, to wit, the 3rd day of May, A. D. 1917, said pretended road petition signed by John Mullin as aforesaid came up before the defendant, the Board of County Commissioners of Platte County, and the proposed road was ordered by said defendant, the Board of County Commissioners of Platte County, advertised, as described in certain field notes pretended by said order as aforesaid to be on file. By Section 2524 of the Wyoming Compiled Statutes of 1910, it is provided, inter alia, if the Board of County Commissioners "shall determine to establish" any road they shall do certain acts with reference to appointing a day for the filing of objections and claims for damages. That said defendant, the Board of County Commissioners of Platte County, did not enter any order showing its determination to establish the aforesaid proposed [fol. 32] road over the lands of the plaintiff, but, on the contrary, entered the following order:

"Road petition (office No. 83) signed by John Mullin and others, came up and the proposed road was ordered advertised, as described in field notes on file."

That said order is erroneous in describing said petition as being signed by John Mullin and others; in fact said petition was signed by only one person, to-wit, John Mullin.

That said order is further incorrect in referring to "field notes on file" as in fact no field notes were on file. If anything was on file at all pertaining to a road, it was the description of a road described as the "Mullin Road" and the plat hereinabove referred to in Paragraph Seven hereof.

9. That thereafter, beginning with the issue of the 9th day of May, 1917, and thereafter for four consecutive weeks, ending with the issue dated the 30th day of May, A. D. 1917, said description of the so-called "Mullin Road," as aforesaid, was published in the regular and entire issue, and not in any supplement, of the Wheatland Times, a newspaper published weekly at Wheatland, Wyoming.

10. That prior thereto, said plaintiff had no notice of any of the proceedings of said defendant, the Board of County Commissioners [fol. 33] of Platte County, relating, or pretending to relate, to the proposed road as aforesaid.

11. That by the terms of the notice mentioned in Paragraph Nine hereof, it was provided that "All objections thereto, or claims for damages by reason thereof, must be filed in writing with the County Clerk of said County before noon on the 7th day of June, A. D. 1917, or such road will be established without reference to such objections or claims for damages."

That after the publication of said notice as aforesaid, said defendant, the Board of County Commissioners of Platte County, entered an order that the time for the plaintiff to file its objections and claims for damages on account of said proposed road traversing plaintiff's land, be extended until the 3rd day of July, A. D. 1917.

That thereafter, on the 30th day of June, A. D. 1917, said plaintiff filed with the County Clerk of Platte County, Wyoming, certain "objections and claims for damages," claiming, among other things, that the proceedings of the defendants were in contravention to the Constitution of the State of Wyoming and the United States of America, and that said defendants had failed to comply with the statutes of the State of Wyoming in relation to the location of [fol. 34] public roads, and that the proceedings of said defendants in relation to the location of said proposed public road were irregular, defective and void.

12. That notwithstanding said defendant, the Board of County Commissioners of Platte County, had extended the time for the plaintiff to file its objections and claims for damages as aforesaid from the 6th day of June, A. D. 1917, to the 3rd day of July, A. D. 1917, said defendant, the Board of County Commissioners of Platte

County, on the 8th day of June, 1917, in violation of the rights of the plaintiff in the premises, and before the time for plaintiff to file its objections and claims for damages had expired and before said plaintiff in fact had filed its objections and claims for damages as aforesaid, appoint three certain appraisers to determine the damages occasioned by the establishment of said proposed County Road, and by the appointment so made and as signed by the County Clerk of Platte County, Wyoming, the investigation of said appraisers was limited to the claims made by the following persons and in the following amounts, that is to say:

[fol. 35] Lon Heaton	$250.00
R. G. Eddy	50.00
F. S. Mitchell	100.00
H. M. Shelburne	Cost of fencing.
Wyoming Development Co.	30.00
John Mullin	Fence ¾ of a mile, or pay for ground at 25.00 an acre.

That said appointment of said appraisers by said defendant, the Board of County Commissioners of Platte County, was pretended to be made under and by virtue of the provisions of Section 2528 of the Wyoming Compiled Statutes of 1910, and for the purpose of having the ground through and over which said proposed road was to be run, viewed on a day fixed by said defendant, the Board of County Commissioners of Platte County, to determine the amount of damages sustained by claimants therefor. That notwithstanding the defendants well knew that said defendant, the Board of County Commissioners of Platte County, had extended the time for the plaintiff to file its objections and claim for damages, and well knew that the plaintiff had not filed its objections and claim for damages, and well knew that said plaintiff desired and intended to file objec-[fol. 36] tions and claims for damages and withheld so doing in reliance upon the order of the defendant, the Board of County Commissioners of Platte County, in extending the time to file said objections and claim for damages, fixed as the time for the appraisers to view said ground over which said road was proposed to be established, the 15th day of June, A. D. 1917, a time before that fixed by the defendant, the Board of County Commissioners of Platte County, for plaintiff to file objections and claims for damages. That by reason thereof, said acts of the defendant, the Board of County Commissioners of Platte County, in so appointing the said appraisers and fixing the time for their report as aforesaid, were not only inequitable and unjust to the plaintiff, but were unlawful and void.

13. That notwithstanding said defendant, the Board of County Commissioners of Platte County, had fixed the 15th day of June, A. D. 1917, as the time for said appraisers to view the ground over which said road was proposed to be established, said appraisers, in violation of the order appointing them, did not proceed and view

said proposed road until the 16th day of June, A. D. 1917. That the purpose of the meeting of said appraisers was to determine the amount of damages sustained by persons objecting to the location [fol. 37] of said proposed road and for that purpose they were authorized "to hear such evidence as they may deem necessary in determining the amount of damages fixed by them, and to that end were authorized to administer oaths to each other and to such witnesses as they may hear."

That therefore, plaintiff was entitled to a hearing before said appraisers to offer evidence upon the question of damages to be sustained by it by reason of said proposed road running over its lands. That notwithstanding such right, said appraisers did not notify said plaintiff at the time and place when it could be heard and offer evidence as aforesaid, and not only failed to give notice to the plaintiff but actually held its meeting for the purpose of determining the damages as aforesaid upon a day other than that fixed by the defendant, the Board of County Commissioners of Platte County, in its order appointing said appraisers. That said appraisers, in holding their meeting and determining the amount of damages as aforesaid, pretended to act under and by virtue of the provisions of Section 2530 of the Wyoming Compiled Statutes of 1910, which section is in the following words and figures, towit:

[fol. 38] "Duties of Appraisers.—The said appraisers shall, within ten days after receiving notice of their appointment, meet at some convenient place, on the line of said proposed or altered road, and take and administer to each other, an oath or affirmation to faithfully and impartially discharge their duties. They shall then view the ground, so far as they shall deem it necessary, and fix the amount of damages sustained by each claimant, after allowing for all benefits that may accrue to each claimant, by reason of the location or alteration of the said proposed road. They, or a majority of them, shall as soon as practicable, after performing their said duties, make a report in writing to the county clerk of their doings, stating that they were so sworn or affirmed as aforesaid, before performing their duties and fixing the amount of damages, if any, sustained by each claimant, after allowing and deducting for benefits, and where they have disallowed claims for damages, they shall so state in their report, and they shall immediately transmit their report, when made, to the County clerk. They shall, whenever they can conveniently do so, notify the claimants or their agents, of the place of their meeting and may hear such evidence as they may deem necessary in determining the amount of damages fixed by them. They are hereby authorized to administer oaths to each other and to such witnesses as they may hear. If any of them shall fail or refuse to perform his duth, the other two appraisers shall serve and shall appoint a suitable and disinterested elector in his place, who shall be within easy access, and he shall be sworn or affirmed in like manner as the other two appraisers, and the facts of such appointment and qualification shall be stated in said report to the county clerk. The said appraisers shall each receive for his compensation such

reasonable sum as the board of county commissioners shall allow. (L. 1895, ch. 69, Sec. 18; R. S. 1899, Sec. 1923.)"

[fol. 39] 14. That said appraisers, after having viewed said road, filed with the County Clerk, on a day not set forth by the proceedings of said defendant, the Board of County Commissioners of Platte County, their report averring that they had, on the 16th day of June, A. D. 1917, proceeded and viewed said proposed road the whole distance thereof, through "the premises of said claimant," and had thereupon determined that "said premises" will not be rendered less valuable, but that the benefits to be derived from said road will exceed the damages, and that "the complainant" will not thereby sustain damages. From said report it is impossible to determine what particular claimant or complainant said report refers to, nor does said report contain a description of the premises viewed by said appraisers and determined by said appraisers not to be damaged as they report. That said report in law and in fact is not in compliance with the statutes of the State of Wyoming in such cases made and provided, is defective because of uncertainty and makes no finding as to the claim of any particular person, much less, determine the rights of plaintiff herein.

15. That the defendant, the Board of County Commissioners of Platte County, has refused to recognize the claim for damages made by the plaintiff and in all of its proceedings has completely ignored said claim for damages, merely treating said document so filed by [fol. 40] the plaintiff as a remonstrance. That since the filing of said objections and claim for damages by the plaintiff and notwithstanding the statutes of the State of Wyoming require that three appraisers pass upon said claim for damages, said defendant, the Board of County Commissioners of Platte County, has failed and neglected to appoint appraisers to pass upon the claim for damages as made by the plaintiff. In fact, with the exception that the objections and claim for damages as filed by the plaintiff physically are in the files of the defendant, the Board of County Commissioners of Platte County, the record of its proceedings kept by it, fails to show that any objections or claim for damages were ever filed by plaintiff. The only record made by the defendant, the Board of County Commissioners of Platte County, with reference to the proposed road through the lands of the plaintiff is the entry, "a remonstrance received from Max Pam against the establishment of proposed road (office No. 83) was filed." That if said record, with reference to a remonstrance received from Max Pam, is to be regarded as record of the filing of the objections and claim for damages by the plaintiff, such entry is incorrect, in that said objections and claim for damages of plaintiff were filed June 30, 1917, whereas the record kept by defendant, the Board of County Commissioners of Platte [fol. 41] County, is made as of the date of the 5th day of July, 1917.

15. That thereafter, on, towit, the 10th day of August, A. D. 1917, without any notice to plaintiff and without granting to said

plaintiff a hearing upon the matter, and without giving said plaintiff an opportunity to present evidence upon the question of damages, said defendant, the Board of County Commissioners of Platte County, unlawfully and without warrant of law, entered an order establishing said road as described in said description hereinabove set forth in Paragraph Three hereof, and now proposes to confiscate and appropriate the lands of the plaintiff over which said road is proposed to be located, without paying to said plaintiff just compensation for such of said plaintiff's land so confiscated and appropriated, and without compensating plaintiff for damages, which it will sustain to its lands adjacent to said proposed road.

16. That the plaintiff had no notice, either constructive, oral or in writing, of the time and place when said appraisers would view said grounds as aforesaid, and was given no opportunity to be heard upon the question of damages said plaintiff would sustain by reason not only of the confiscation and appropriation of its lands to be used [fol. 42] for said proposed public road, but the damages said plaintiff would sustain by reason of injuries to its land adjacent to said road by reason of the location of said proposed road.

17. That for a more accurate statement of the acts and proceedings of said defendant, the Board of County Commissioners of Platte County, this plaintiff refers to the original records and minutes of said defendant, the Board of County Commissioners of Platte County, and makes them a part hereof as though herein fully set forth, a copy of which is attached hereto and marked Exhibit A.

18. That Chapter 168 of the Wyoming Compiled Statutes of 1910, and all sections thereof, but particularly Section 2530 and 2531 of the Wyoming Compiled Statutes of 1910, being Sections 18 and 19 of Chapter 69 of the Laws of 1895, are in violation and contravention of Sections 6, 7 and 33 of Article 1 of the Constitution of the State of Wyoming, and in violation and contravention of the Fourteenth Amendment to the Constitution of the United States of America, in that said chapter, and particularly said two sections, fail to make provision for the defendant, the Board of County Commissioners of Platte County, and such other Boards of County Commissioners of the State as may act thereunder, to give notice to the plaintiff, and others similarly situated, of time and place of hearing of [fol. 43] the *pro*proceedings of, said defendant, the Board of County Commissioners of Platte County, and other Board of County Commissioners acting thereunder, or of appraisers so appointed by said defendant, the Board of County Commissioners of Platte County, or any of said Boards, and fail to provide that said defendant, the Board of County Commissioners of Platte County, or its appraisers or other Board of County Commissioners of the State and their appraisers acting under said sections, shall give the plaintiff and others similarly situated an opportunity to be heard and offer evidence upon the matters fixed for determination by said defendant, the Board of County Commissioners of Platte County, and its appraisers and said other Board of County Commissioners and their appraisers.

19. That all the acts and proceedings of the defendants, as hereinabove set forth in the present case, are unlawful, void and are in violation and contravention of Sections 6, 7 and 33 of Article 1 of the Constitution of the State of Wyoming, and in violation and contravention of the Fourteenth Amendment of the Constitution of the United States of America, and constitute taking plaintiff's property without just compensation and without due process of law.

[fol. 44] 20. That by reason of the defective petition filed with said defendant, the Board of County Commissioners of Platte County, it was without jurisdiction in the premises and all acts and things done by it thereafter were unlawful and void. That the plaintiff cannot, by appeal from the decision of said defendant, the Board of County Commissioners of Platte County, as provided by law, review the irregular and unlawful acts of the defendants other than upon the question of damages sustained by plaintiff, and therefore, unless the defendants are perpetually restrained they, and each of them, will unlawfully and unconstitutionally confiscate and appropriate the valuable rights, properties and lands of the plaintiff to its great and irreparable injury.

Wherefore, the plaintiff prays judgment that the said defendants, and each of them, their officers, attorneys and agents, be perpetually restrained from taking any further proceedings or doing acts with respect to locating said proposed road as above set forth, and particularly from confiscating or appropriating any of the rights, properties and lands of the plaintiff for the purpose of using same for a public road or highway as contemplated, or for any other unlawful purpose, and for such other relief as may seem to the court equitable.

Kline and Natwick, Attorneys for Plaintiff.

[fol. 45] Jurat showing the foregoing was duly sworn to by Harry H. Phillips; omitted in printing.

[fol. 46] EXHIBIT A TO PETITION

We, the undersigned, being all the owners of land through which the following proposed road will pass, in consideration of the Board of County Commissioners of Platte County, declaring that *said* a County Road, do hereby covenant and agree with said Board of the County Commissioners of said Platte County, Wyoming, that we will each and all of us waive any and all claims to damages for the land taken for such road, and for moving fences and building fences, and hereby donate to said county a right of way for such road:

Commencing at a point where County Road No. 13 intersects the East line of Sec. 9, Tp. 26, Rg. 68 W. and running thence south on Sec. line to the S. E. corner of Sec. 33, 26, 68, thence South on Sec. line to the E. ¼ cor. Sec. 4, Tp. 25, 68, thence in a southerly direction to the N. E. cor. of the S. E. ¼ of S. W. ¼ Sec. 3, 25, 68, thence South on half section line to the center of Section 10, thence E. ¼

mile to the N. E. cor. of N. W. ¼ of S. E. ¼, Sec. 10, thence south ¾ mile to the N. E. cor. of the S. W. ¼ of the N. E. ¼ of Sec. 15, thence East ¼ mile to the N. E. cor. of S. E. ¼ of N. E. ¼ of Sec. 15, thence south on section line to the E. ¼ corner of Sec. 27, Tp. 25, Rg. 68.

D. F. Romine, F. E. Martin, W. A. Martin, C. L. Thompson, H. L. Modons, M. Rinker, F. N. Hall, W. R. Cook, Jas. Hood, J. C. Spaeth, John Mullin.

[fol. 47] Petition

Wheatland, Wyo., March 21, 1917.

The the Board of County Commissioners, Wheatland, Wyoming:

The undersigned ask- that a public road, commencing at a point where County Road No. 13 intersects the east line of Section 9, Tp. 26 N., R. 68 W. of the 6th Principal Meridian, Wyoming, and running thence south on section line to the south-east corner of Sec. 33, Tp. 26, R. 68, thence south on section line to the E. quarter corner of Sec. 4, Tp. 25, Rg. 68, thence in a southeasterly direction to the northeast corner of the southeast quarter of the southwest quarter of Sec. 3, Tp. 25, Rg. 68, thence South on the half section line to the center of Sec. 10, thence east one quarter of a mile to the northeast corner of the northwest quarter of the southeast quarter Sec. 10, thence south three quarters of a mile to the northeast corner of the southwest quarter of the northeast quarter of Section 15, thence east one-quarter mile to the northeast corner of the southeast quarter of the northeast quarter of Sec. 15, thence south on Section line to the East quarter Corner of Sec. 27, Tp. 25, Rg. 68, be established, said road to be 60 — wide.

Respectfully submitted. Names, John Mullin; Postoffice, Wheatland.

[fol. 48] Names of All Persons Owning Land Along Road

Road Law

Any person desiring the establishment, vacation or alteration of a public road, shall file in the office of the county clerk of the proper county, a petition signed by ten or more electors of the county residing within fifteen miles of the road proposed to be established, altered or vacated.

With said petition shall be filed a list containing the names and also the known postoffice address of each person owning or having an interest in any land over which the proposed establishment, vacation or alteration of a public road is to be made.

No petition will be received or considered by the Commissioners that does not conform to the law. Blank petitions can be obtained from the County Clerk, Platte County, Wyoming.

Below give the names of all persons owning land through which the road passes:

Names	Postoffice
P. N. Hall	Dwyer, Wyo.
James Hood	" "
John W. Cook	" "
State of Wyoming	
Joseph C. Spaeth	Dwyer, Wyo.
J. M. Eddy	" "
R. G. Eddy	" "
W. R. Cook	" "
C. H. Thompson	" "
Morris Rinker	" "
[fol. 49] S. R. Mills	Dwyer, Wyo.
W. E. Meadow	Uva, "
P. S. Mitchell	Uva, "
Anzo Heaton	
M. E. Ames or N. L. L. Co.	
North Laramie Land Co.	
H. M. Shelburn	Uva, "
John Mullin	" "
Wm. Martin	" "
Mr. Romine	" "

(Endorsed on back:) Petition No. 83. Date, April 4, 1917. Bessie S. Fitz, County Clerk.

[fol. 50] STATE OF WYOMING,
County of Platte, ss:

To A. E. Hoffman:

Whereas, at the regular session of the Board of County Commissioners of the County of Platte, Wyoming, begun and held on the 4 day of April, A. D. 1917, a petition signed by John Mullin and others, was presented to the Board, applying for, and asking the location of a county road in said county as follows, to-wit (here copy description of road as in the petition):

Commencing at a point where Co. Road No. 13 intersects the East line of Sec. 9, T. 26 R. 68 W. and running thence South on Sec. line to S. E. Cor. of Sec. 33 T. 26 R. 68, thence South on Sec. line to East ¼ cor. sec. 4 T. 25 R. 68, thence in a southeasterly direction to the N. E. cor. of S. E. ¼ of S. W. ¼ Sec. 3, T. 25 R. 68. Thence south on ½ sec. line to the center of Sec. 10. Thence E. 1-4 mile to the N. E. Cor. of S. W. ¼ of N. E. ¼ Sec. 10. Thence S. ¾ mile to the N. E. Cor. of S. W. ¼ of N. E. ¼ of Sec. 15. Thence E. ¼ mile to N. E. cor. of S. E. ¼ of N. E. ¼ of Sec. 15. Thence S. on Sec. line to E. ¼ cor. of Sec. 27 T. 25 R. 68.

Said petition being signed by at least Ten Electors of said County, residing within fifteen miles of where said road is asked to be located. Therefore, it is ordered that you, the said A. E. Hoffman are appointed to view, and lay out and report upon said road. And after qualifying under oath to faithfully and impartially perform your duties in the premises, proceed to view said road, from said [fol. 51] point of beginning, to said intermediate points, if any, and to said point of terminus, and on or as near the said line between said points as prayed for in said petition as, in your opinion, a good road can be made at a reasonable expense, taking into consideration the utility, convenience and inconvenience and expense which will result to individuals as well as to the public if said road shall be located and you will make and sign a report in writing stating your opinion in favor or against the location of said road and your reasons for such opinion, and include in, or return with, said report, a definite description of the line, and direction of said road as viewed by you between said points by reference as far as possible to section, or subdivision lines and corners, stating number of Section, Township and Range, and to fixed and permanent land marks.

And which report, together with a correct plat you make of said road you will, together with this order, file with the County Clerk of said county, on or before the 3rd day of May, A. D. 1917.

Given under our hands in open session and attested by the seal of said County this 6 day of April A. D. 1917.

A. E. Hoffman, Chairman.

Attest: Bessie S. Fitz, County Clerk, by Paul Shetler, Deputy. (Seal.)

(Platte County.)
(The State of Wyoming.)
(County Clerk.)

[fol. 52] (Endorsed on back:) County Road. Appointment of, and order to, viewer, made the 6 day of April, A. D. 1917. Bessie S. Fitz, County Clerk. Returned and filed with report of viewer, this 20 day of April, A. D. 1917. Bessie S. Fitz, County Clerk.

[fol. 53] To the Honorable Board of County Commissioners of the County of Platte, in the State of Wyoming:

The undersigned who was appointed by you as viewer, to view, lay out and report upon the location of a county road petitioned for by John Mullen and others, do hereby report that I upon first being duly sworn to faithfully and impartially discharge the duties respecting said matter, and in obedience to your orders made in the premises, did proceed to view, locate and lay out the line of estab lishment of said road, such — of said road as so viewed, laid out, located and determined upon by me being described as follows, to wit: ——.

I sure reccom-end that the road be established as the pertit-on called for.

The line above described being the center line of said road as viewed, located, laid out and determined by me, and my opinion is that said road should be established for the reason that it is a benefit to a great many people and should be established.

(Here state the probable expense of the same, including damages to the property owners along the line thereof, and such other matters therein as shall enable the said Board to act understandingly in the premises.)

There should be three bridges made and some work done on the hills each side of the two rivers the expence of said road would cost about $5,000.00.

[fol. 54] Given under my hand this 20th day of April, A. D. 1917.
A. E. Hoffman, Viewer.

Oath of Viewer

THE STATE OF WYOMING,
County of Platte, ss:

I, A. E. Hoffman, who was on the 4 day of April, A. D. 1917, appointed by the Board of County Commissioners of the County of Platte, Wyoming as viewer of a proposed road petitioned for by John Mullen and others, do solemnly swear that I will faithfully and impartially perform the duties as such viewer.

A. E. Hoffman, Viewer.

Subscribed and sworn to before me this 6 day of April, A. D. 1917. Bessie S. Fitz, County Clerk. Paul Shetler, Deputy. (Platte County, the State of Wyoming, —— ——, County Clerk.)

[fol. 55] Report of viewer on county road petitioned for by John Mullin et al. Filed this 20 day of April, A. D. 1917. Bessie S. Fitz, County Clerk.

[fol. 56] Description of Mullin Road

Beginning at a point on the East bound-ry line of section 27 T. 25 N. R. 68 W. 300 ft. south of the E. ¼ cor. of said section, thence N. 59°-00′ W. 705 ft.; thence N. 27°-15′ W. 120 ft., thence N. 65°-00′ E. 700 ft.; thence N. 4°-30′ E. 840 ft.; thence N. 23-45′ W. 190 ft. to the East bound-ry line of said section 27; thence N. on said east bound-ry line of said section 1,110 ft. to the N. E. cor. of said section 27; thence N. on East bound-ry line of section 22-T. 25 N. R. 68 W. one half mile to the E. ¼ cor. said section 22; thence North on said bound-ry line 1820 ft.; thence N. 36°-15′ E. 400 ft.; thence N. 3°-30′ W. 380 ft., thence N. 39°-15′ W. 300 ft. to a point on the East bound-ry line of section 15 T. 25 N. R. 68 W. 115 ft. North of the S. E. cor. said section 15; thence N. on

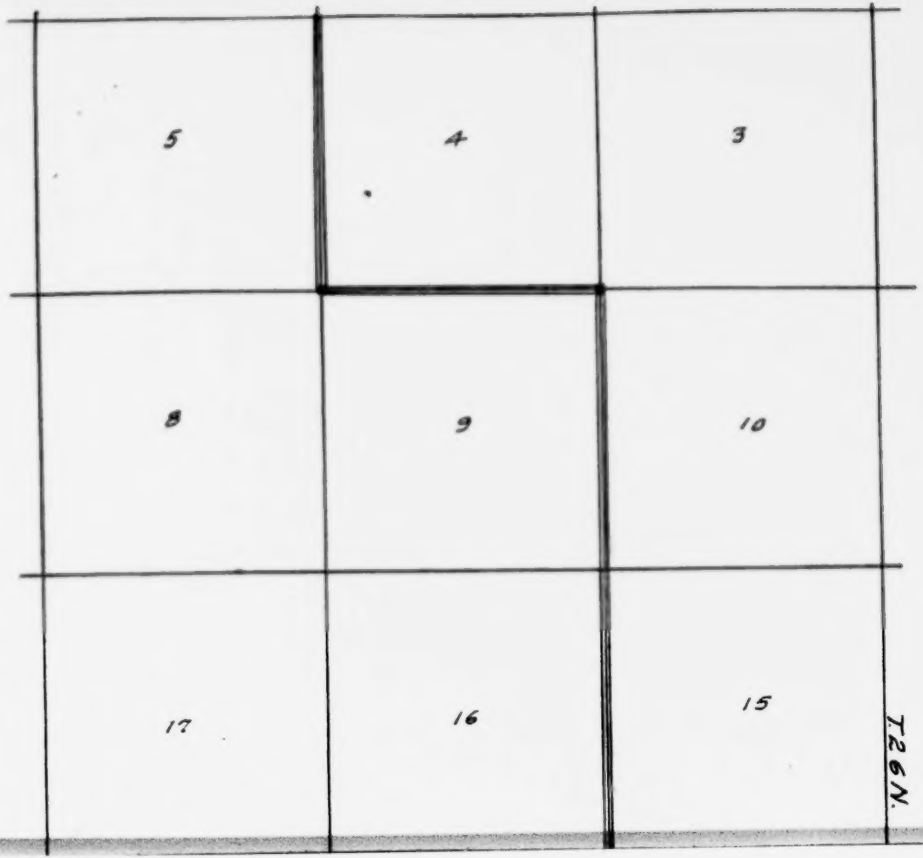
East bound-ry line of said section 15 2525 ft. to the E. ¼ cor. of said section 15; thence N. on said bound-ry line one fourth mile to the N. E. cor. S. E. ¼ N. E. ¼ said section 15; thence West on North bound-ry line of said forty one fourth mile to the N. W. cor. of said forty; thence North on forty line three fourths mile to the N. E. cor. N. W. ¼ S. E. ¼ section 10 T. 25 N. R. 68 W.; thence west on the south side of the north bound-ry line of said forty one fourth mile to the N. W. cor. of said forty; thence N. on the W. bound-ry line of the S. W. ¼ N. E. ¼ said section 10 one fourth mile to the N. W. cor. of said forty; thence N. 11° 45′ E. 1490 ft.; thence N. 2°-00′ W. 1270 ft.; thence N. 54°-30′ W. 3480 ft. to the west bound-ry line of section 3 T. 25 N. R. 68 W. thence N. on said bound-ry line of said section 1820 ft. to the N. W. cor. said section 3; thence north on section line five miles to the S. E. cor. Section 4 T. 26 N. R. 68 W.; thence W. on south bound-ry line of said section 4, one mile to the S. W. cor. section 4, thence north on the west bound-ry line of said section 4 one mile to the N. W. cor. of said section 4 and intersect County road No. 114.

(Here follows blue print marked side folio page 57.)

[fol. 58] Notice of Proposed Location of Road

To all whom it may concern:

The Board of the County Commissioners of Platte County, State of Wyoming, have decided to locate a road beginning at a point on the East boundary line of Section 27, Township 25 North, Range 68 West, 300 feet south of the E. ¼ corner of said section, thence North 59 degrees 00 minutes West 705 feet; thence North 27 degrees 15 minutes West 120 feet; thence North 65 degrees 00 minutes East 700 feet; thence North 4 degrees 30 minutes East 840 feet; thence North 23 degrees 45 minutes West 190 feet to the East boundary line of said section 27; thence North on said East boundary line of said section 1,110 feet to the Northeast corner of said section 27; thence North on East boundary line of section 22, Township 25 North, Range 68 West one-half mile to the E. ¼ corner said section 22; thence North on said boundary line 1,820 feet; thence North 36 degrees 15 minutes East 400 feet; thence North 3 degrees 30 minutes West 380 feet; thence North 39 degrees 15 minutes West 300 feet to a point on the East boundary line of section 15, township 25 North, range 68 West 115 feet North of the South-east corner said section 15; thence North on East boundary line of said section 15 2,525 feet to the E. ¼ corner of said Section 15; thence North on said boun[illegible] line one-fourth mile to the North-east corner S. E. ¼ N. E. ¼ said section 15; thence West on North boundary line of said forty one-fourth mile to the Northwest corner of said forty; thence North on forty line three-fourths mile to the North-east corner N. W. ¼ S. E. ¼ section 10, Township 25 North, Range 68 West;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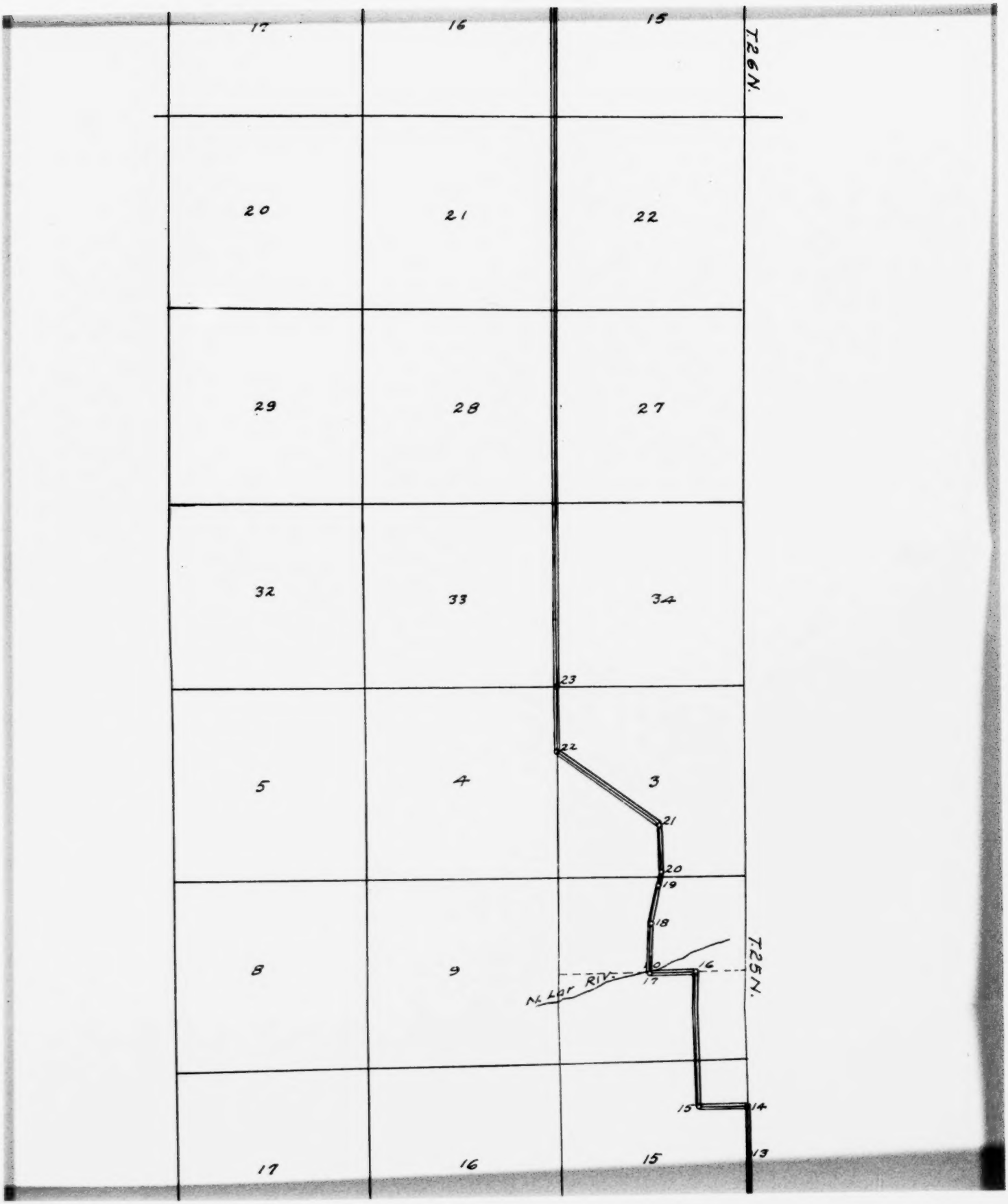
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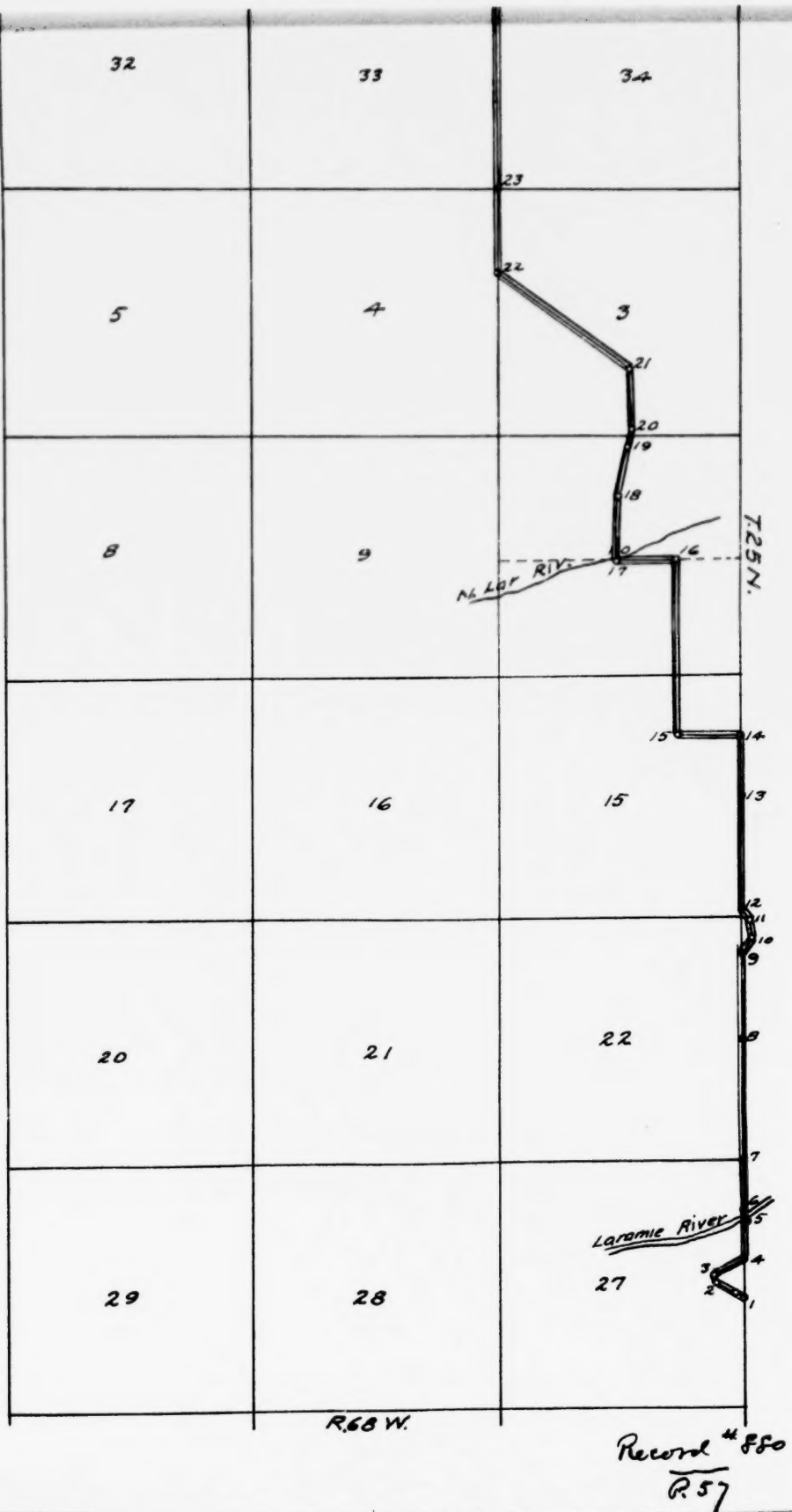

Record # 850

R.57

thence West on the South side of the North boundary line of said forty one-fourth mile to the North-west corner of said forty; thence North on the West boundary line of the S. W. ¼ N. E. ¼ said section 10 one-fourth mile to the North-west corner of said forty; thence North 11 degrees 45 minutes East 1,490 feet; thence North 2 degrees 00 minutes West 1,270 feet; thence North 54 degrees 30 minutes West 3,480 feet to the West boundary line of section 3, Township 25 North, Range 68 West; thence North on said boundary line of said section 1,820 feet to the Northwest corner said section 3; thence North on section line five miles to the South-east corner section 4, Township 26 N. R. 68 W.; thence West South boundary line of said section 4, one mile to the Southwest corner section 4, thence North on the West boundary line of said section 4 one mile [fol. 59] to the North-west corner of said section 4 and intersect County Road No. 114, in Platt County, Wyoming said road to be 60 feet wide, 30 feet on each side of line above described.

All objections thereto or claims for damages by reason thereof must be filed in writing with the county clerk of said county before noon on the 7th day of June, A. D. 1917, or such road will be established without reference to such objections or claims for damages.

Dated May 8th, 1917.

Bessie S. Fitz, County Clerk.

1st pub. May 9. Last pub. May 30.

[fol. 60] Affidavit of Publication

I, E. S. Drury, Business Manager of The Wheatland Times, a newspaper published weekly at Wheatland, Wyo., do solemnly swear that a certain notice, as per clipping attached, was published in the regular and entire issue of said newspaper, and not in any supplement thereof for 4 consecutive weeks, commencing with the issue dated May 9, 1917 and ending with the issue dated May 30, 1917.

E. S. Drury.

Subscribed and sworn to before me this 27th day of Sept., 1917. Harvey C. Corbridge, Clerk of Court. My commission expires —— ——, 19—. The District Court of Wyoming Platte County.

[fol. 61] Stipulation

It is hereby stipulated and agreed by and between the Board of County Commissioners of Platte County, Wyoming, and The North Laramie Land Company be and they are hereby granted unto the third day of July, 1917, to file their objections and claim for damages on account of County Road No. 83, traversing said Company's lands.

Board of County Commissioners of Platte County, Wyoming.
A. E. Hoffman, Chairman.

[fol. 62] Stipulation

It is hereby stipulated and agreed by and between the Board of County Commissioners of Platte County, Wyoming, and The North Laramie Land Company, that the said North Laramie Land Company be and they are hereby granted until the third day of July A. D. 1917 to file their objections and claim for damages on account of County Road No. 83 traversing said Company's land.

Board of County Commissioners of Platte County, Wyoming,
by A. E. Hoffman, Its Chairman.

(Endorsed on back:) Filed July 2, 1917. Bessie S. Fitz, County Clerk.

[fol. 63] Uva, Wyoming, June 6, '17.

To the Board of Co. Commissioners.

DEAR SIRS: The damage to my property and cost of moving and building new fence will be $250.00. And I object to County taking over any of my ditches in Road right of way at any price.

Lon Heaton.

Notice attached.

(Endorsed on back:) Received June 6, 1917, at 3:35 P. M. Besse S. Fitz, County Clerk, by Paul Shetler, Deputy.

[fol. 64] June 6, 1917.

Board of Commissioners.

DEAR SIRS: I have rec'd notice of a road that goes along the east side of my place and I am asking for $50.00 damage which I think is just about what it will cost me to put up a good fence.

Yours Resp't-, R. G. Eddy, Dwyer, Wyo.

(Endorsed on back:) Received June 6, 1917, 4:45 P. M. Besse S. Fitz, by Paul Shetler, Deputy.

[fol. 65] Uva, Wyoming, June 4th, 1917.

Hon. Board of County Commissioners, Wheatland, Wyo.

GENTLEMEN: In view of the fact that proposed county road—commencing at Sec. 27 Tp. 25 R. 68 & running north to County Road No. 114—in running through my ranch cuts 40 acres—N. W.¼ of N. E.¼ Sec. 10 Tp. 25 R. 68—completely off from the rest of the ranch & also from water thus rendering it absolutely useless to me. I must put in a claim for $100.00 damages. I put in no claim for right of way or fencing, etc.

Yours truly, F. S. Mitchell.

(Endorsed on back:) Filed June 5, 1917. Bessie S. Fitz.

[fol. 66] Sec. 1170. Wyoming Compiled Statutes.—No account shall be allowed by the Board of County Commissioners unless the same shall be made out in separate items, properly dated, and the value of each item specifically described, and when no specified fees are allowed by law, the date that such services were rendered and the time actually and necessarily devoted to the performance of any service charged in such account shall be specified, which account so made out shall be verified by affidavit, setting forth that said account is just and correct, and that the whole or no part of the same has been paid by the county or any individual.

June 1, 1917.

Platte County, Wyoming, to H. M. Shelburne, Dr.

To fencing land, one-fourth mile, for County Road "Petition No. 83. Cost of Fencing S. W. of N. W. Sec. 14-25-68.

THE STATE OF WYOMING,
County of Platte, ss:

I do solemnly swear that the foregoing account is just and correct, and has not been paid, nor any part thereof, by the County of Platte, or any individual.

H. M. Shelburne.

Subscribed and sworn to before me this 1st day of June, A. D. 1917. Bessie S. Fitz, County Clerk, by —— ——, Deputy.

(Endorsed on back:) Claim of H. H. Shelburne, for Road Damages. Filed June 1, 1917. Bessie S. Fitz, Clerk.

[fol. 67] Sec. 1170. Wyoming Compiled Statutes.—No account shall be allowed by the Board of County Commissioners unless the same shall be made out in separate items, properly dated, and the value of each item specifically described, and when no specified fees are allowed by law, the date that such services were rendered and the time actually and necessarily devoted to the performance of any service charged in such account shall be specified, which account so made out shall be verified by affidavit, setting forth that said account is just and correct, and that the whole or no part of the same has been paid by the county or any individual.

June 5, 1917.

Platte County, Wyoming, to Wyoming Development Company, Dr.

To damages on account of county road which angles across the E. ½ of S. E. ¼ of Section 27-25-68..... 30.00

THE STATE OF WYOMING,
County of Platte, ss:

I do solemnly swear that the foregoing account is just and correct, and has not been paid, nor any part thereof, by the County of Platte, or any individual.

Joseph A. Elliott.

Subscribed and sworn to before me this — day of ——, A. D. 191-.

—— ——, County Clerk, by —— ——, [illegible]

[fol. 68] (Endorsed on the back:) Claim for Wyoming Development Company for Road Damages, $30.00. Filed June 5, 1917. Bessie S. Fitz, Clerk.

[fol. 69] Wheatland, Wyo., June 6, 1917.

County Clerk:

Your letter was received yesterday, as to the road. If the county will build a fence three quarters of a mile on my side of the road, or pay for the ground at $25 per acer eithe- one will be all right with me.

Respt., John Mullin.

(Endorsed on back:) Filed June 6, 1917. Bessie S. Fitz, Clerk.

[fol. 70] STATE OF WYOMING,
County of Platte, ss:

Board of County Commissioners

In the matter of the petition for the location of a road beginning at a point on the east boundary line of section twenty-seven (27), township twenty-five (25) north, range sixty-eight (68) west, three hundred (300) feet south of the east one-quarter (E. ¼) corner of said section and ending at the northwest corner of section four (4) of township twenty-five (25) north, range sixty-eight (68) west and intersecting county road number 114.

And now comes the North Laramie Land Company, a corporation organized and existing under and by virtue of the laws of the State of Wyoming, and says that it is the owner and interested in land bordering on either side or both sides of, and the owner and interested in, the land over which that portion of the said road is to be located, described as follows, to-wit:

Beginning at the East one-quarter (E. ¼) corner of Section Twenty-two (22), Township Twenty-five (25) North, Range Sixty-eight (68) West, thence North on the boundary line of said Section Twenty-two (22) eighteen hundred and twenty (1820) feet; thence North thirty-six (36) degrees fifteen (15) minutes East four

hundred (400) feet; thence North three (3) degrees thirty (30) minutes West three hundred and eighty (380) feet; thence North thirty nine (39) degrees fifteen (15) minutes West three hundred (300) feet to a point on the East boundary line of Section Fifteen (15), Township Twenty-five (25) North, Range Sixty-eight (68) West one hundred and fifteen (115) feet North of the Southeast [fol. 71] corner said Section Fifteen (15); thence North on East boundary line of said Section Fifteen (15) twenty-five hundred and twenty-five (2525) feet to the East one-quarter (E. ¼) corner of said Section 15 (15); thence North on said boundary line one-fourth mile to the Northeast corner Southeast Quarter (S. E. ¼) of Northeast quarter (N. E. ¼) said Section fifteen (15); thence West on North boundary line of said forty one-fourth mile to the Northwest corner of said forty; thence North on forty line three-fourths mile to the Northeast corner Northwest quarter (N. W. ¼) Southeast Quarter (S. E. ¼) Section Ten (10), Township Twenty-five (25) North, Range Sixty-eight (68) West; thence West on the South side of the North boundary line of said forty one-fourth mile to the Northwest corner of said forty, and there ending.

And the North Laramie Land Company objects to the locating of said road upon the lands, or any part of the same, so owned by said North Laramie Land Company and to the proceedings relating thereto, and every part thereof, for the reasons:

1. The Board of County Commissioners of Platte County, Wyoming, are without power to so locate said road.

2. That the proceedings of the Board of County Commisioners in locating said road contravene Sections 6, 7 and 33 of the Constitution of the State of Wyoming, and contravene the Fifth Amendment to the Constitution of the United States.

3. That the statutes of the State of Wyoming purporting to confer upon the Board of County Commissioners of Platte County authority to locate said road are void as being in contravention to Sections 6, 7 and 33 of the Constitution of the State of Wyoming, and in con- [fol. 72] travention to the Fifth Amendment to the Constitution of the United States.

4. That Sections 18 and 19 of Chapter 69 of the laws of 1895, being Sections 2530 and 2531 of the Wyoming Compiled Statutes, are void as being in contravention to Sections 6, 7 and 33 of the Constitution of the State of Wyoming, and in contravention to the Fifth Amendment to the Constitution of the United States.

5. That said Board of County Commissioners of Platte County have failed to comply with the statutes in relation to the location of public roads.

6. That the proceedings of the Board of County Commissioners of Platte County in relation to the location of said public road are irregular and defective and therefore void.

7. That said road as undertaken to be located by the Board of County Commissioners of Platte County is not justified as a matter of public necessity or convenience, or private convenience.

8. That the alleged necessity of the location of said road does not justify the expense of construction thereof.

9. That the location of said road as aforesaid through the lands of the North Laramie Land Company is prejudicial in that said road would have been less expensive to the County and incur less private damage and inconvenience if located either entirely on other lands [fol. 73] or on some other lands in lieu of all the land of the objector above described.

10. That the Board of County Commissioners of Platte County prejudicially decided to locate said road upon the lands of the North Laramie Land Company in such a manner as to cause the North Laramie Land Company to bear the expense of substantially the entire road, whereas, said road could have been located otherwise with greater public benefit and convenience, also private convenience, and therefore should be located partly, if not wholly, upon the other lands.

11. That the location of said road as aforesaid is unfair, inequitable and prejudicial to the rights of the North Laramie Land Company, in that the owners of other lands will receive the same, if not greater benefits by reason of the location of said road as now proposed without contributions or bearing directly or indirectly any portion of the expense thereof.

12. That the Board of County Commissioners should have located said road upon other lands.

13. That the description of the location of said road as prepared by the Board of County Commissioners is vague and indefinite.

And the said North Laramie Land Company, not waiving its claim of the unconstitutionality of the acts and procedure as aforesaid, or any of its obligations above set forth, shows:

[fol. 74] 1. That the benefits to be derived by said North Laramie Land Company from the location of said road are much less than the damages said North Laramie Land Company will sustain by reason of the location of said road.

2. That any alleged benefits to be derived by the North Laramie Land Company cannot be charged or set off against the value of the land actually taken for the purpose of said road.

3. That if the road is located as undertaken by the Board of County Commissioners of Platte County, that it, the said North Laramie Land Company, will sustain great damages.

For which damages it hereby makes claim.

North Laramie Land Company, by Harry H. Phillips, President. (Corporate Seal The North Laramie Land Co., Wyoming.) —— ——, Attorney for Objector and Claimant.

Attest: G. M. Morley, Secretary.

(Endorsed on back:) Filed June 30, 1917. Bessie S. Fitz, County Clerk.

[fol. 75] Appointment of Appraiser

Wheatland, Wyo., June 8, 1917.

To Geo. L. Foxton, J. W. Vaudrey, C. Hauf.

DEAR SIR-: You are hereby notified that you have been, on June 8, A. D. 1917, appointed as appraiser- of damages occasioned by the establishment of county road; that the following named persons are claimants for damages on account of the location of said road; that the amount of damages asked by each claimant, viz:

Lon Heaton, damages claimed, $250.00.
R. G. Eddy, damages claimed, $50.00.
F. S. Mitchell, damages claimed, $100.00.
H. M. Shelburne, damages claimed, cost of fencing.
Wyo. Dev. Co., damages claimed, $30.00.
John Mullin, fence ¾ mi. or pay for ground at $25 per acre.

In accordance with Section 2528 of the Compiled Statutes, 1910, June 15, A. D. 1917 was fixed by the Board as the time for the appraisers to view the ground.

Your report in writing must be filed within thirty days after June 8, A. D. 1917. The law relating to your duties as appraisers, as contained in Section 2530 of compiled Statutes, 1910, is as follows:

"Sec. 2530. The said appraisers shall, within ten days after receiving notice of their appointment, meet at some convenient place, on the line of said proposed or altered road, and take and administer to each other, an oath or affirmation to faithfully and impartially discharge their duties. They shall then view the ground, so far as they shall deem it necessary, and fix the amount of damages sustained by each claimant, after allowing for all benefits that may accrue to each claimant, by reason of the location or alteration of said proposed road. They, or the majority of them shall, as soon as practicable, after performing their said duties, make a report in writing to the county clerk of their doings, stating that they were so sworn or affirmed, as aforesaid, before performing their duties and fixing the amount of damages, if any, sustained by each claimant, allowing and deducting for benefits, and where they have disallowed claims for damages they shall so state in their reports and

they shall immediately transmit their report, when made, to the County Clerk. They shall, whenever they can conveniently do so, notify the claimants or their agents, of the place of their meeting and may hear such evidence as they may deem necessary, in determining the amount of damages fixed by them. They are hereby [fol. 76] authorized to administer oaths to each other and to such witnesses as they may hear. If any one of them shall fail or refuse to perform his duty, the other two appraisers shall serve and shall appoint a suitable and disinterested elector in his place, who shall be within easy access, and shall be sworn or affirmed in like manner as the other two appraisers, and the facts of such appointment and qualification shall be stated in said report to the County Clerk. They said appraisers shall each receive for his compensation such reasonable sum as the Board of County Commissioners shall allow."

Bessie S. Fitz, County Clerk.

[fol. 77] THE STATE OF WYOMING,
County of Platte, ss:

I, J. W. Vaudrey, duly appointed by the Board of County Commissioners, as appraisers for the proposed County Road known as Office No. 83, do hereby solemnly swear (or affirm) that I will faithfully and impartially perform the duties of appraiser according to law.

(Signed) J. W. Vaudrey.

Subscribed and sworn to before me this 15 day of June, 1917.
A. E. Hoffman, County Commissioner.

THE STATE OF WYOMING,
County of Platte, ss:

I, Geo. L. Foxton, duly appointed by the Board of County Commissioners, as appraiser for the proposed County Road known as Office No. 83, *so* solemnly swear (or affirm) that I will faithfully and impartially perform the duties of appraiser according to law.

(Signed) Geo. L. Foxton.

Subscribed and sworn to before me this 15 day of June, 1917.
A. E. Hoffman, County Commissioner.

THE STATE OF WYOMING,
County of Platte, ss:

I, C. Hauf, duly appointed by the Board of County Commissioners, as appraisers for the proposed County Road known as Office No. 83, do hereby solemnly swear (or affirm) that I will faithfully and [fol. 78] impartially perform the duties of appraiser according to law.

(Signed) C. Hauf.

Subscribed and sworn to before me this 15 day of June, 1917.
A. E. Hoffman, County Commissioner.

[fol. 79] Road Appraisers' Report.

To the Honorable Board of County Commissioners of the County of Platte, in the State of Wyoming:

The undersigned appraisers appointed by you to appraise and report on the claims for damages by reason of the establishment of the county road by Office No. 83, over and upon the following described premises of said complainant (here give description of complainant premises over or upon which the road has been laid out by the road viewers), do hereby report that upon first being duly sworn to faithfully and impartially discharge our duties respecting said matter, we, on the 16th day of June, A. D. 1917 proceeded and viewed said proposed road the whole distance thereof through said premises of said claimant, and thereupon we have assessed and determined that said premises will not be rendered less valuable (state amount if any) that the benefit to be derived from the said road will exceed the damages; and that said complainant will not thereby sustain damages.

J. W. Vaudrey, Geo. L. Foxton, C. Hauf, Appraisers.

[fol. 80] In the Matter of the Road in —— County, Wyoming, Petitioned for by —— and Others

To the Honorable Board of the County Commissioners of the County of ——, Wyoming:

We, —— ——, the duly appointed appraisers in the above named matter, do hereby certify and report that we have been first duly sworn by each other to perform and discharge our duties as appraisers in said matter, on the — day of ——, A. D. 19—, met along the line of said proposed road for the purpose of performing our duties in said matter, and appraise the lands in accordance with the statement contained. One of the appraisers, —— ——, being absent and failing to perform his duties, therein and by reason of said absence and failure, we therefore at said time and place appointed —— ——, a suitable and disinterested elector of said county in his place. We thereupon administered said —— —— an oath to faithfully and impartially discharge his duties respecting said matter.

—— ——, Appraisers.

[fol. 81] To Miss Bessie S. Fitz, County Clerk of the County of Platte, in the State of Wyoming:

In compliance with section 2536 of Compiled Statutes of Wyoming, 1910, you are hereby notified that F. S. Mitchell whose claim for damages for a county road established through his land, filed in your office June 5th, 1917, and rejected by the Board of the County Commissioners of the County of Platte, State of Wyoming on August

7th, 1917, appeals from the final decision of said Board of County Commissioners of the County of Platte, State of Wyoming to the District Court of Platte County, Wyoming.

Dated this 6th day of September, A. D. 1917.

F. S. Mitchell, by Kline and Natwick, His Attorneys.

[fol. 82] I, Harvey C. Corbridge, Clerk of the District Court of the County of Platte, State of Wyoming, do hereby certify that F. S. Mitchell who has this day served notice of appeal upon the County Clerk of said County, appealing from the final decision of the Board of the County Commissioners of the County of Platte, State of Wyoming, rejecting the claim of said F. S. Mitchell for damages for a County Road through his land has this day deposited a cash bond of Fifty Dollars for perfecting said appeal, which Bond I hereby approve.

Dated the 6th day of September, 1917.

Harvey C. Corbridge, Clerk of the District Court.

[fol. 83] (Envelope marked as follows:) -83- C R #137 P P 34, 40.

Petition signed by John Mullin and others asking a County Road be established as follows:

"Commencing at a point where County Road No. 13 intersects the East Line of Sec. 9, Tp. 26, Rg. 68 W. and running thence south on Sec. line to the S. E. corner or Sec. 33, 26, 68, thence South on Sec. line to the E. ¼ cor. Sec. 4, Tp. 25, 68, thence in a southeasterly direction to the N. E. corner of the S. E. ¼ of S. W. ¼ Sec. 3, 25, 68, thence South on half section line to the center of Sec. 10, thence E. ¼ mile to the N. E. cor. of S. W. ¼ of N. E. ¼, Sec. 10, thence south ¾ mile to the N. E. cor. of the S. W. ¼ of the N. E. ¼ of Sec. 15, thence E. ¼ mile to the N. E. cor. of S. E. ¼ of N. E. ¼ of Sec. 15, thence south on section line to the E. ¼ corner of Sec. 27, Tp. 25 Rg. 68.

Book 1, Pd. 202, April 4, 1917: Ordered Viewed & Surveyed. A. E. Hoffman Appointed viewer. May 3, 1917. Ordered advertised.

Bk. 1-208.—1-213: June 8, 1917.—In the matter of proposed County Road (Office No. 83) claims for damage amounting to $455.00 having been filed C. Hauf Geo. Foxton and J. W. Vaudrey were appointed appraisers and June 15th fixed as the time for the appraisers to fix the amount of damages.

Commissioners Proceedings, Book 1, Page 217: The hearing of Road Petition Office No. 83 was continued until the August meeting. A remonstrance received from Max Pam against the establishment of proposed road (Office No. 83) was filed.

August 10th.—Commissioners' Proceedings, Book 1, Page 222: "Road Petition (Office No. 83) came up for final action and a road was established as follows:" See record.

[fol. 84] Commissioners' Pro eedings in the Matter of Proposed Road (Office No. 83)

Wednesday, April 4th, 1917.

Road Petition (Office No. 83) Signed by John Mullin for a county road commencing at a point where County Road No. 13 intersects the east line of Section 9, Tp. 26, Range 68 W. and running thence south on section line to the southeast corner of Sec. 33, Tp. 26, Rg. 68, thence south on section line to the east quarter corner of Section 4, Tp. 25, Rg. 68, thence in a southeasterly direction to the northeast corner of the southeast quarter of the southwest quarter of sec. 3, Tp. 25, Rg. 68 thence south on the half section line to the center of Sec. 10, thence east one quarter of a mile to the northeast corner of the northwest quarter of the southeast quarter of sec. 10, thence south three quarters of a mile to the northeast corner of the southwest quarter of the northeast quarter of Sec. 15, thence east one quarter mile to the Northeast corner of the southeast quarter of the Northeast quarter of section 15, thence south on Section line to the east quarter corner of Sec. 27, Tp. 25, Rg. 68, was presented and ordered viewed and surveyed.

Wednesday, April 4th, 1917.

In accordance with Sec. 2518 W. C. S. 1910, the following named persons were appointed to view the roads as proposed in the following petitions, to-wit:

Road Petition No. 68, A. E. Hoffman, Road Petition No. 81, U. S. Jones, Road Petition No. 83, A. E. Hoffman, Road Petition No. 76, Geo. S. Martin. Road Petition No. 67, Geo. S. Martin.

Thursday, May 3rd, 1917.

Road Petition (Office No. 83) signed by John Mullin and others came up and the proposed road was ordered advertised as described in field notes on file.

Friday, June 8th, 1918.

In the matter of proposed County road (Office No. 83) claims for damage amounting to $455.00 having been filed, C. Hauf, Geo. Foxton and J. W. Vaudrey were appointed appraisers and June 15th fixed as the time for the appraisers to fix the amount of damages.

Thursday, July 5th, 1917.

The hearing of Road Petition Office No. 83 was continued until the August meeting.

A remonstrance received from Max Pam against the establishment of proposed road (Office No. 83) was filed.

Friday, August 10th.

Road Petition (Office No. 83) came up for final action, and a road was established as follows:

Beginning at a point on the East boundary line of Section 27 T. 25 N. R. 68 W. 300 ft. south of the E. ¼ corner of said section, thence N. 59°-00′ W. 705 ft; thence N. 27°-15′ W. 120 ft. thence N. 65 °-00′ E. 700 ft.; thence N. 4°-30′ E. 840 ft.; thence N. 23°-45′ W. 190 ft. to the East boundary line of said section 27; thence N. on said east boundary line of said section 1110 ft. to the N. E. cor. [fol. 85] of said section 27; thence N. on East boundary line of section 22-T. 25 N. R. 68 W. one half mile to the E. ¼ cor. said section 22; thence North on said boundary line 1820 ft.; thence N. 36°-15′ E. 400 ft.; thence N. 3°-30′ W. 380 ft. thence N. 39°-15′ W. 300 ft. to a point on the East boundary line of section 15 T. 25 N. R. 68 W. 115 ft. North of the S. E. cor. said section 15; thence N. on East boundary line of said section 15 2525 ft. to the E. ¼ cor. of said section 5; thence N. on said boundary line one fourth mile to the N. E. cor. S. E. ¼ N. E. ¼ said section 15; thence West on North boundary line of said forty one fourth mile to the N. W. cor. of said forty; thence North on forty line three fourths mile to the N. E. cor. N. W. ¼ S. E. ¼ section 10 T. 25 N. R. 68 W.; thence west on the south side of the north boundary line of said forty, one fourth mile to the N. W. cor. of said forty; thence N. on the W. boundary line of the S. W. ¼ N. E. ¼ said section 10 one fourth mile to the N. W. cor. of said forty; thence N. 11°-45′ E. 1490 ft.; thence N. 2°-00′ W. 1270 ft. thence N. 54°-30′ W. 3480 ft. to the west boundary line of section 3 T. 25 N. R. 68 W. thence N. on said boundary line of said section 1820 ft. to the N. W. cor. said section 3; thence north on section line five miles to the S. E. cor. section 4 T. 26 N. R. 68 W.; thence W. on south boundary line of said section 4, one mile to the S. W. cor. section 4, thence north on the west boundary line of said section 4 one mile to the N. W. cor. of said section 4 and intersect County road no. 114. Said road to be sixty feet, wide, thirty feet on each side of the line above described.

[fol. 86] THE STATE OF WYOMING,
County of Platte, ss:

I, Bessie S. Fitz, County Clerk and Clerk of the Board of the County Commissioners of Platte County, Wyoming, do hereby certify the within and foregoing to be full, true and correct copies of all the papers in the matter of Petition for County Road (Office No. 83) and the location of said road (No. 137) and of the Commissioners proceedings in said matter, so full and entire as same appear on file and of record in my office.

In witness whereof I have hereunto set my hand and affixed my seal of office, at Wheatland, Wyoming, this 20th day of October, A. D. 1917.

Bessie S. Fitz, County Clerk and Clerk of the Board of County Commissioners of Platte County, Wyoming, by G. S. Agnew, Deputy. (The State of Wyoming, Platte County, County Clerk.)

[fol. 87] DISTRICT COURT, PLATTE COUNTY

[Title omitted]

PRECIPE FOR SUMMONS

The Clerk of the above named Court will issue a Summons in the above entitled cause returnable according to law endorsed on said Summons "Civil Action for Injunction for which together with costs, plaintiff will take judgment if defendant fails to answer."

Kline and Natwick, Attorneys for Plaintiff.

[fol. 88] IN PLATTE COUNTY DISTRICT COURT

[Title omitted]

SUMMONS AND SHERIFF'S RETURN

THE STATE OF WYOMING,
County of Platte, ss:

I hereby certify that I received the within Summons on the 30th day of Nov. 1917 at 5:30 o'clock P. M. and served the same at Platte County aforesaid, on the 30th day of November, 1917, by delivering a certified copy thereof, together with all the endorsements thereon as well as a true and correct copy of the petition on file in said action to Albert E. Hoffman, Chairman of the Board of the County Commissioners of Platte County, Wyoming.

A. S. Roach, Sheriff of Platte County, by —— ——, Deputy.

STATE OF WYOMING,
County of Platte, ss:

To the Sheriff of Platte County, Greeting:

You are hereby commanded to notify Albert E. Hoffman, Ulyssis S. Jones, George S. Martin, Individually and as constituting the Board of County Commissioners of Platte County, Wyoming, and *the Board of County Commissioners of Platte County, Wyoming,* that they have been sued in the First District Court of the State of Wyoming, sitting in the Town of Wheatland, within and for the County of Platte, in the State of Wyoming, for the trial of causes arising under the laws of said State, by North Laramie Land Company, a corporation organized and existing under and by virtue of the laws of the State of Wyoming and that unless they answer the petition of the plaintiff, herein filed, on or before the 29th day of December A. D. 1917, said petition, with all the matters and allegations therein contained, will be taken as true, and judgment rendered accordingly. And make due return of this writ according to law on the 10th day of December A. D. 1917.

Witness Harvey C. Corbridge, Clerk of said Court, and the seal thereof at Wheatland, this 30th day of November A. D. 1917.

Harvey C. Corbridge, Clerk of District Court, Platte Co.,
by—— ——, Deputy.

[fol. 89] IN THE DISTRICT COURT OF PLATTE COUNTY

[Title omitted]

THE STATE OF WYOMING,
County of Platte, ss:

AFFIDAVIT OF D. W. BRICE

D. W. Brice, being duly sworn says as follows:

I am agent for the above named plaintiff.

I am familiar with all the material matters stated in the petition filed in this action, and have actual knowledged thereof, and I verily believe that all such matters therein stated are true.

That the Board of the County Commissioners of the County of Platte, State of Wyoming, have unlawfully entered upon the lands of the plaintiff described in said petition, with their agents, servants, contractors and employees and are unlawfully appropriating said land for a public highway and are unlawfully constructing a bridge thereon, and otherwise appropriating plaintiff's property to public use unlawfully.

D. W. Brice.

Subscribed in my presence and sworn to before me the 10th day of December, A. D 1917. Harvey C. Corbridge, Clerk District Court.

[fols. 90 & 91] BOND FOR INJUNCTION FOR $1,500—Approved December 10, 1917; omitted in printing

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[fol. 92] IN DISTRICT COURT OF PLATTE COUNTY

[Title omitted]

ORDER FOR INJUNCTION—Filed December 10, 1917

To Albert E. Hoffman, Ulyssis S. Jones, and George S. Martin, individually and as constituting the Board of County Commissioners of Platte County, Wyoming, and the Board of County Commissioners of Platte County, Wyoming, defendants:

The plaintiff in the above cause having commenced an action in the District Court of the First Judicial District of the State of Wyoming, in and for the County of Platte, against the above named defendants, and having prayed for an injunction against said defendants, requiring them to refrain from certain acts, in said petition, and hereinafter more particularly mentioned. On reading said petition in said action, duly verified by the oath of Harry H. Phillips, and it satisfactorily appearing to me therefrom, and from a certain affidavit filed in support thereof that it is a proper case for an injunction, and that sufficient grounds exist therefor, and the necessary undertaking having been given, and the Honorable William C. Mentzer, Judge of said Court being absent from Platte County, Wyoming.

It is therefore ordered by me, the Court Commissioner of said District Court, that until further order in the premises, you, the said Albert E. Hoffman, Ulyssis S. Jones, and George S. Martin, Individually and as constituting the Board of County Commissioners of Platte County, Wyoming, and the Board of County Commissioners of Platte County, Wyoming, and all your counsellors, attorneys, solicitors and agents, and all others acting in aid or assistance of you, and each and every one of you, do absolutely desist and refrain from taking any further proceedings or doing any acts with respect to locating the proposed county road particularly described in plaintiff's petition in said action, across the lands of plaintiff described in the petiton on file in this action, and particularly from confiscating or appropriating any of the rights, properties and lands of the plaintiff for such road, or any unlawful purpose; and it is further ordered by me that you, and each and every one of you absolutely desist and refrain from going or entering upon, or being upon the lands described in *pa*lintiff's petition, or building, constructing and establishing any bridge or road or roads thereon. Bond required and furnished $1,500.00.

Dated this 10th day of December, A. D. 1917.

G. D. McDougall, Court Commissioner. (Seal the District Court of Wyoming, Platte County.)

[fol. 93] Clerk's certificate to foregoing paper omitted in printing.

[fol. 94] IN THE DISTRICT COURT OF PLATTE COUNTY

[Title omitted]

WRIT OF INJUNCTION—Filed December 27, 1917

The People of the State of Wyoming to Albert E. Hoffman, Ulyssis S. Jones, and George S. Martin, individually and as constituting the Board of County Commissioners of Platte County, Wyoming, and the Board of County Commissioners of Platte County, Wyoming, defendants, send Greetings:

The above named plaintiff having filed its petition in our District Court of the First Judicial District of the State of Wyoming, and for Platte County, against the above named defendants, praying for an injunction against said defendants, requiring them to refrain from certain acts, in said petition, and hereinafter more particularly mentioned. On reading the said petition in this action, duly vertified, and a certain affidavit filed in support thereof, and it satisfactorily appearing to Hon. G. D. McDougall, Court Commissioner of said Court therefrom that it is a proper case for an injunction, and that sufficient grounds exist therefor, and the necessary and proper undertaking having been given, and the Hon. G. D. McDougall, Court Commissioner of said Court having made and caused to be entered an order in words and figures as follows:

[fol. 95] "THE STATE OF WYOMING,
County of Platte, ss:

IN THE DISTRICT COURT, FIRST JUDICIAL DISTRICT

NORTH LARAMIE LAND COMPANY, a Corporation, Plaintiff,

vs.

ALBERT E. HOFFMAN, ULYSSIS S. JONES, and GEORGE S. MARTIN, Individually and as Constituting the Board of County Commissioners of Platte County, Wyoming, and the Board of County Commissioners of Platte County, Wyoming, Defendants.

ORDER OF INJUNCTION

To Albert E. Hoffman, Ulyssis S. Jones, and George S. Martin, individually and as constituting the Board of County Commissioners of Platte County, Wyoming, and the Board of County Commissioners of Platte County, Wyoming, defendants:

The plaintiff in the above named case having commenced an action in the District Court of the First Judicial District of the State of Wyoming, in and for the County of Platte, against the above name- defendants, and having prayed for an injunction against said defendants, requiring them to refrain from certain acts, in said pe-

tition, and hereinafter more particularly mentioned. On reading said petition in said action, duly verified by the oath of Harry H. Phillips, and it satisfactorily appearing to me therefrom, and from a certain affidavit filed in support thereof that it is a proper case for injunction, and that sufficient grounds exist therefor, and the necessary undertaking having been given, and the Honorable William C. Mentzer, Judge of said Court being absent from Platte County, Wyoming.

It is therefore ordered by me, the Court Commissioner of said District Court, that until further order in the premises, you, the said Albert E. Hoffman, Ulyssis S. Jones, and George S. Martin, Individually and as constituting the Board of County Commissioners of Platte County, Wyoming, and the Board of County Commissioners of Platte County, Wyoming, and all your counsellors, attorneys, solicitors and agents, and all others acting in aid or assistance of you, and each and every one of you, do absolutely desist and refrain from taking any further proceedings or doing any acts with respect to locating the propsoed county road particularly described in plaintiff's petition in said action, across the lands of plaintiff described in the petition on file in this action, and particularly from confiscating or appropriating any of the rights, properties and lands of the plaintiff for such road, or any unlawful purpose; and it is further ordered by me that you, and each and every one of you absolutely desist and refrain from going or entering upon, or being upon the lands described in plaintiff's petition, or building, constructing and establishing any bridges or road or roads thereon, Bond required and furnished $1,500.00.

Dated this 10th day of December, A. D. 1917.

G. D. McDougall, Court Commissioner.

[fol. 96] We therefore in consideration thereof, and of the particular matters in said petition set forth, do strictly command you and each and every one of you, that until the further order of said Court, you and each of you, your and each of your servants, agents, attorneys, employees, and all persons acting under the control, authority or direction of you or any of you do absolutely refrain from and desist from taking any further proceedings or doing any acts with respect to locating the proposed County Road particularly described in plaintiff's petition on file in this action, across the lands of the plaintiff particularly described in said petition, and particularly from confiscating or appropriating any of the rights, properties and lands of the plaintiff for such road, or any unlawful purpose; that you, and each and every one of you do absolutely refrain from and desist from going or entering upon, or being upon the lands described in plaintiff's petition, or building, constructing and establishing any bridge or bridges, or road or roads thereon.

Witness Harvey C. Corbridge, Clerk of said Court, and the seal thereof at Wheatland, this 10th day of December, A. D. 1917.

Harvey C. Corbridge, Clerk of the District Court of Platte County, Wyoming.

[File endorsement omitted.]

I hereby certify that I rec'd this Writ Dec. 10 1917 at 4 o'clock P. M. and served the same on the 15th day of Dec. 1917 at 4 o'clock P. M. by delivering a true copy of the same to A. E. Hoffman, Chairman of the Board of County Commissioners of Platte County, Wyoming.

A. S. Roach, Sheriff.

[fol. 97] Clerk's certificate to foregoing paper omitted in printing.

[fol. 98] IN THE DISTRICT COURT OF PLATTE COUNTY

[Title omitted]

ANSWER

Come now defendants, Albert E. Hoffman, Ulyssis S. Jones, and George S. Martin, individually and as the Board of County Commissioners of Platte County, Wyoming, and for answer to the petition of the plaintiff herein, allege:

1. Defendants have no knowledge as to whether plaintiff is a duly organized corporation as alleged in paragraph one of its petition and therefore deny the same.

2. Defendants admit that they are members and constitute the P ard of County Commissioners of Platt County, Wyoming.

3. Defendants admit that plaintiff is the owner of the land described in paragraph three of the petition.

4. Defendants admit that on the 21st day of March, 1917, a petition asking that public road be established commencing at a point described in said petition and running thence north with certain meanders through and over the lands of plaintiff and others, was filed, but deny that said petition was signed only by John [fol. 99] Mullin, and allege the fact to be that said petition was signed by eleven electors of the County of Platte residing within fifteen miles of the said road proposed to be established.

5. Defendants deny that on the 6th day of April, 1917, defendant Albert E. Hoffman, pretending to act for the Board of County Commissioners, appointed himself as viewer of said proposed road, but allege that said Albert E. Hoffman was on the said 6th day of April, 1917, appointed as said viewer by the Board of County Commissioners of the County of Platte at a regular session of said board.

6. Defendants allege that pursuant to his said appointment said Albert E. Hoffman proceeded to view said proposed road, and on the 20th day of April, 1917, as such viewer, filed his report to the Board of County Commissioners of the County of Platt recommending the establishment of the road as called for by the petition; that in said report said Albert E. Hoffman as viewer stated the probable expense of constructing said road to be five thousand dollars, and in estimating said expense said Albert E. Hoffman included the damages to property owners along the line of said road.

7. Defendants allege that thereafter they proceeded in full compliance with the statutes of the State of Wyoming to lay out and provide for the construction of said proposed road; that they caused the County Surveyor to make an accurate survey thereof and to plat and record the same in the book provided by the county for such purpose, and that a copy of said plat and notes of survey were without unnecessary delay filed in the office of the County Clerk with the files devoted exclusively to said proceedings relating to the opening and construction of said proposed road; that they caused a notice of the proposed location of said road to be published for four successive weeks in the Wheatland Times, a weekly news- [fol. 100] paper published in the County of Platte, and thereafter on the 8th day of June, 1917, duly appointed George L. Foxton, J. W. Vaudrey and C. Hauf, three suitable and disinterested electors of the said County of Platte, as appraisers to view the ground; that said appraisers so appointed duly took oath to faithfully and impartially perform their duties as such appraisers, did duly proceed with the performance of their duties as such appraisers, and did view the ground over which said road was proposed to be constructed and did fix the amount of damages sustained by each owner of said ground after allowing for all benefits that might accrue to each of said owners by reason of the location of said proposed road and did make a report in writing to the County Clerk of their said doings in conformity with the statutes of the State of Wyoming; that thereafter on the 10th day of August, 1917, said Board of County Commissioners proceeded to hear and consider petitions for and remonstrances against the establishment of said proposed road, and did establish the said road as follows:

Beginning at a point on the East boundary line of Section 27, T. 25 N., R. 68 W. 300 ft. south of the E. ¼ corner of said section, thence N. 59°00′ W. 705 ft.; thence N. 27°15′ W. 120 ft.; thence N. 65°00′ E. 700 ft.; thence N. 4°30′ E. 840 ft.; thence N. 23°45′ W. 190 ft. to the East boundary line of said Section 27; thence N. on said East boundary line of said section, 1110 ft. to the N. E. cor. of said section 27; thence N. on East boundary line of Section 22, T. 25 N., R. 68 W. one-half mile to the E. ¼ cor. of said Section 22; thence north on said boundary line 1820 ft.; thence N. 36°15′ E. 400 ft.; thence N. 3°30′ W. 380 ft.; thence N. 39°15′ W. 300 ft. to a point on the East boundary line of Section 15, T. 25 N., R. 68 W., 115 ft. North of the S. E. cor. of said Section 15; thence N. on East

boundary line of said Section 15; 2525 ft. to the E. ¼ cor. of said Section 15; thence N. on said boundary line one-fourth mile to the N. E. cor. S. E. ¼ N. E. ¼ of said Section 15; thence West on the North boundary line of said forty one-fourth mile to the N. W. [fol. 101] cor. of said forty; thence North on forty line three-fourths mile to the N. E. cor. N. W. ¼ S. E. ¼ Section 10, 25 N., R. 68 W.; thence west on the south side of the North boundary line of said forty, one-fourth mile to the N. W. cor. of said forty; thence North on the West boundary line of the S. W. ¼ N. E. ¼ of said Section 10 one-fourth mile to the N. W. cor. of said forty; thence N. 11° 45′ E. 1,490 ft.; thence N. 2°00′ W. 1,270 ft.; thence N. 54°30′ W. 3,480 ft. t the West boundary line of Section 3, T. 25 N., R. 68 W.; thence North on said boundary line of said section, 1,820 ft. to the N. W. cor. of said Section 3; thence North on section line five miles to the S. E. cor. Section 4, T. 26 N., R. 68 W., thence West on South boundary line of said Section 4, one mile to the S. W. cor. Section 4; thence North on the West boundary line of said Section 4 one mile to the N. W. cor. of said Section 4 and intersect County Road No. 114. Said road to be sixty feet wide, thirty feet on each side of the line above described.

8. Defendants allege that plaintiff herein filed with the County Clerk of Platte County a remonstrance against the construction of said road and a claim for damages which plaintiff claimed would result to it by reason of the construction of said road; that said remonstrance and claim for damages was duly considered by the said Board of County Commissioners at its said meeting on August 10, 1917, and disallowed by said Board, and that plaintiff has taken no appeal from said action of the said Board of County Commissioners in disallowing said claim for damages.

9. Defendant denies that Chapter 168 of the Wyoming Compiled Statutes of 1910 or any portion thereof is in violation and contravention of Sections 6, 7 and 33 of Article 1 of the Constitution of the State of Wyoming or in violation and contravention of the Fourteenth Amendment to the Constitution of the United States of fols. 102 & 103] America, and denies that the acts and proceedings of the defendants relative to the opening of said proposed road as the same are set forth in this answer were unlawful or void or in violation and contravention of Section 6, 7 and 33 of Article I of the Constitution of the State of Wyoming, or in violation and contravention of the Fourteenth Amendment to the Constitution of the United States of America.

10. Defendants deny that they were without jurisdiction in the premises and deny that their acts and proceedings as above set forth were unlawful and void because of want of jurisdiction in the premises.

11. Defendants deny each and every allegation in said petition contained, not hereinbefore specifically admitted or denied.

Wherefore, defendants pray that plaintiff take nothing in this action and that the order of injunction heretofore granted by G. D. McDougall, Court Commissioner, on the 10th day of December, 1917, be dissolved and that defendants recover of plaintiff their costs and disbursement in this action sustained and that defendants have such other and further relief as may to the court seem just and equitable.

C. A. Paige, Clarke & Haggard, Attorneys for Defendants.

Jurat showing the foregoing was duly sworn to by Albert E. Hoffman omitted in printing.

[fol. 104] In the District Court of Platte County

[Title omitted]

Reply

Comes now the plaintiff, North Laramie Land Company, a corporation, and for reply to so much of the joint and several ans-er of the defendants as it, the said plaintiff, is advised is necessary to be answered, alleges:

[fol. 105] 1. Plaintiff denies that said Albert E. Hoffman, in filing his report as a viewer of said proposed road, included damages to the property owners along the line of said road, as said defendants in Paragraph 6 of their answer allege.

2. Plaintiff denies that the appraisers, George L. Foxton, J. W. Vaudrey and C. Hauf, appointed by the defendant, Board of County Commissioners of Platte County, Wyoming, duly proceeded with the performance of their duties as such appraisers and fixed the amount of damages sustained by each owner of said ground after allowing for all benefits that might accrue to each of said owners by reason of the location of said proposed road, and made a report in writing to the County Clerk of their said doings, in conformity with the Statutes of the State of Wyoming, as is alleged in Paragraph 7 of defendant's answer.

3. Plaintiff further denies that thereafter said Board of County Commissioners heard all petitions and remonstrances against the establishment of said proposed road.

4. Plaintiff further denies that defendant, Board of County Commissioners of Platte County, Wyoming, consider-d said remonstrances and claim for damages at its said meeting at August 10, 1917, as alleged by defendants in paragraph 8 of their answer.

[fol. 106] Wherefore, plaintiff prays judgment that the said defendants, and each of them, their officers, attorneys and agents, be perpetually restrained from taking any further proceedings or doing acts with respect to locating said proposed road, as in plaintiff's

original petition is set forth, and particularly from confiscating or appropriating any of the rights, property and lands of the plaintiff, for the purpose of using the same for a public road or highway, or for any other unlawful purpose, and for such other relief as to the court may seem equitable.

Pam and Hurd and Kline and Natwick, Attorneys for Plaintiff.

[fol. 107] Jurat showing the foregoing was duly sworn to by Harry H. Phillips omitted in printing.

[fol. 108] In District Court of Platte County

[Title omitted]

Præcipe for Subpœna

The Clerk of the above named court will issue a Subpœna for the following persons, viz., D. W. Brice and Chas. Wilson, to appear at February term of said Court on the 5th day of Feb., A. D. 1918, at 9 o'clock A. M., as a witness for the Plaintiff in the above named case.

Kline and Natwick, Attorneys for Plaintiff.

In District Court of Platte County

Subpœna and Return—Filed February 16, 1918; issued February 1, 1918

State of Wyoming,
County of Platte, ss:

I hereby certify that I received the within subpœna on the second day of February at — o'clock A. M., and served same at Platte County aforesaid, on the second day of February by reading same to the within named

A. S. Roach, Sheriff of Platte County.

[File endorsement omitted.]

[fol. 109] STATE OF WYOMING,
County of Platte, ss:

To J. W. Vaudrey, George L. Foxton, C. Hauf, D. F. Romine, F. E. Martin, C. L. Thompson, W. E. Meadows, H. L. Modous, M. Rinker, F. N. Hall, W. R. Cook, Jas. Hood, J. C. Spaeth, John Mullen, and W. A. Martin:

You are hereby required to be and appear at a term of the District Court of the First Judicial District of the State of Wyoming, to be holden in Wheatland, on the 5th day of February A. D. 1918 at 10 o'clock A. M., for the causes arising under the laws of said State, then and there to testify as a witness in a cause now pending in said Court, wherein The North Laramie Land Company, a corporation, is plaintiff, and The Board of County Commissioners of Platte County, Wyoming, are defendants, and this you are not to omit under penalty of the law.

Witness, Harvey C. Corbridge, Clerk of said Court and seal thereof, at Wheatland, this 1st day of February, A. D. 1918.

Harvey C. Corbridge, Clerk of District Court, Platte County,
By —— ——, Deputy. (Seal the District Court of Wyoming, Platte County.)

[File endorsement omitted.]

[fol. 110] IN DISTRICT COURT OF PLATTE COUNTY

[Title omitted]

PRÆCIPE FOR SUMMONS—Filed February 5, 1918

The Clerk of the above named Court will issue a Subpœna for the following persons, viz., J. W. Vaudrey, George L. Foxton, C. Hauf, D. F. Romine, F. E. Martin, W. A. Martin, C. L. Thompson, H. L. Modous, M. Rinker, F. N. Hall, W. R. Cook, Jas. Hood, J. C. Spaeth and John Mullen to appear at the February 1918 term of said Court on the 5th day of February, A. D. 1918, at 10 o'clock A. M., as a witness for the plaintiff in the above named case.

C. A. Paige, Attorney for Plaintiff.

[File endorsement omitted.]

[fol. 111] IN DISTRICT COURT OF PLATTE COUNTY

SUBPŒNA AND RETURN—Filed February 16, 1918

To D. W. Brice and Chas. Wilson:

You are hereby required to be and appear at a term of the District Court of the First Judicial District of the State of Wyoming, to be

holden in Wheatland, on the 5th day of February A. D. 1918 at 9 o'clock A. M., for the causes arising under the laws of said State, then and there to testify as a witness in a cause now pending in said Court, wherein North Laramie Land Company is plaintiff, and Albert E. Hoffman, Ulyssis S. Jones, George S. Martin et al. defendants, and this you are not to omit under penalty of the law.

Witness Harvey C. Corbridge Clerk of said Court and Seal thereof, at Wheatland, this 1st day of February, A. D., 1918.

Harvey C. Corbridge, Clerk of District Court, Platte County.

(Seal the District Court of Wyoming, Platte County.)

[File endorsement omitted.]

STATE OF WYOMING,
County of Platte, ss:

I hereby certify that I received the within subpœna on the 1st day of February 1918 at — P. M. and served same at Platte County aforesaid on Fourth day of Feb. by reading same to the within named D. W. Brice and Chas. Wilson.

A. S. Roach, Sheriff of Platte County.

[fol. 112] IN DISTRICT COURT OF PLATTE COUNTY

[Title omitted]

MOTION TO VACATE INJUNCTION

Comes now the defendants in the above entitled action, and move the court that the injunction heretofore granted by G. D. McDougall, court commissioner, on the 10th day of December, A. D. 1917, whereby said defendants were enjoined and restrained from taking any further proceedings or doing any acts with respect to locating the proposed county road particularly described in plaintiff's petition in said action, across the lands of plaintiff particularly described in said petition, be vacated.

This motion is based upon the records in the above entitled cause and upon the affidavit of Albert E. Hoffman hereto attached.

C. A. Paige and Clark and Haggard, Attorneys for Defendants.

[fol. 113] IN THE DISTRICT COURT OF PLATTE COUNTY

[Title omitted]

AFFIDAVIT OF ALBERT E. HOFFMAN

Comes now Albert E. Hoffman, one of the defendants in the above entitled action, and being first duly sworn, deposes and says, that he

is the Chairman of the Board of County Commissioners of the County of Platte, one of the defendants in the above entitled cause; that at a special meeting of said Board of County Commissioners of Platte County held at Wheatland, Platte County, Wyoming, on the 26th day of March, 1918, called for the purpose of appointing appraisers to view the ground and appraise the damages which may be sustained by the North Laramie Land Company by reason of the proposed county road, petition number 83, the following action was had, to-wit:

Upon motion duly made by said Albert E. Hoffman and seconded by U. S. Jones, the following persons were appointed as appraisers to view the ground and the land belonging to the North Laramie Land Company over and across which the above proposed county road [fol. 114] is to traverse and to assess the damages, if any, sustained by the North Laramie Land Company by reason of the establishment of said proposed county road:

T. B. Dodge, E. L. Rumsey and W. A. Baker, who are three suitable and disinterested electors of the County of Platte, State of Wyoming.

Upon motion duly made by said Albert E. Hoffman and seconded by U. S. Jones, the day set for the viewing of the said ground and land across which the said proposed county road is to go was Saturday, March 30, 1918. Said appraisers were ordered to file their report in writing with the County Clerk of Platte County, Wyoming, within thirty days after the date of their appointment, in which report they shall fix the amount of damages sustained by the North Laramie Land Company, if any there be sustained.

That said North Laramie Land Company was duly notified of the said proceedings and of the time and place appointed for the meeting of said appraisers.

That at the time and place appointed for the meeting of said appraisers the said appraisers, after having been duly qualified as such, duly met and viewed said proposed road for the entire distance it t-aversed the land of the said North Laramie Land Company, and thereafter made a report in writing to the County Clerk of their doings, which report was to the effect that the value of the land of the said North Laramie Land Company taken for said proposed road was Five Hundred ($500.00) Dollars, and that the expense to which said North Laramie Land Company would be put in the construction of fences by reason of the construction of said proposed road, was Twelve Hundred ($1,200.00) Dollars, and that the benefit which the said North Laramie Land Company would receive by reason of the construction of the said proposed road would be Three Thousand ($3,000.00) Dollars, and that therefore said North Laramie Land Company was not entitled to any com- [fol. 115] pensation from the County of Platte because of the construction of said proposed road.

That on the 4th day of April, 1918, at the next regular meeting of the Board of County Commissioners after said report had been filed, said Board of County Commissioners considered said report

and neither increased nor dim-ished the damages allowed by the appraisers, and duly decided that said North Laramie Land Company was not entitled to any compensation because of the construction of said proposed road, and the proceedings of the County Commissioners in reference to said report as above set out was duly recorded by the County Clerk in the book of record kept for that purpose.

Albert E. Hoffman.

Subscribed and sworn to before me this 11 day of April, A. D. 1918. W. H. Morrison, Notary Public. My commission expires April 18th, 1891. (Seal W. H. Morrison, Notary Public, Platte County, Wyoming.)

[fol. 116] IN THE DISTRICT COURT OF PLATTE COUNTY

[Title omitted]

NOTICE OF MOTION TO VACATE

To the said North Laramie Land Company, and to Kline & Natwick, attorneys for said North Laramie Land Company:

You are hereby notified that on the 15 day of April, 1918, or as soon thereafter as the same may be heard, the defendants in the above entitled cause will apply to the court for an order vacating the injunction heretofore granted in the above entitled cause, by motion, a copy of which is hereto attached.

C. A. Paige and Clark & Haggard, Attorneys for Defendants.

[fol. 117] IN THE DISTRICT COURT OF PLATTE COUNTY

[Title omitted]

MOTION FOR ORDER TO SHOW CAUSE

Comes now the plaintiff, North Laramie Land Company, and moves the court that the defendants, Albert E. Hoffman, Ulyssis S. Jones and George S. Martin, and the respondents, T. P. Dodge, E. L. Rumsey and W. A. Baker, whose christian names are unknown, be, each and every one, cited to appear and show cause, if any they [fol. 118] have, why they should not be punished for contempt of court in violating the certain order of injunction entered by G. D. McDougall, Court Commissioner of the District Court, First Judicial District of the State of Wyoming, at a time when the Honorable William C. Mentzer, the Judge of said court, was absent from Platte County, Wyoming, on the 10th day of December, A. D. 1917, which order was in the following word and figures, to-wit:

"It is therefore ordered by me, the Court Commissioner of said District Court, that until further order in the premises, you, the said Albert E. Hoffman, Ulyssis S. Jones and George S. Martin, individually and as constituting the Board of County Commissioners of Platte County, Wyoming, and the Board of County Commissioners of Platte County, Wyoming, and all your counsellors, attorneys, solicitors and agents, and all others acting in aid or assistance of you, and each and every one of you, do absolutely desist and refrain from taking any further proceedings or doing any acts with respect to locating the proposed county road particularly described in plaintiff's petition in said action, across the lands of plaintiff described in the petition on file in this action, and partcularly from confiscating or appropriating any of the rights, properties and lands of the plaintiff for such road, or any unlawful purpose; and it is further ordered by me that you, and each and every one of you absolutely desist and refrain from going or entering upon, or [fol. 119] being upon the lands described in plaintiff's petition, or building, constructing and establishing any bridges or road or roads thereon."

and in support thereof herewith attaches the affidavit of Harry H. Phillips, President of said plaintiff Company.

Kline and Natwick, Attorneys for Plaintiff.

[fol. 120] IN DISTRICT COURT OF PLATTE COUNTY

AFFIDAVIT OF HARRY H. PHILLIPS

Harry H. Phillips, being first duly sworn, deposes and says that he is the President of the North Laramie Land Company, plaintiff in a cause now pending in the District Court, First Judicial District, in the County of Platte and State of Wyoming, said cause being entitled North Laramie Land Company, a corporation, plaintiff, v. Albert E. Hoffman, Ulyssis S. Jones, George S. Martin, individually and as constituting the Board of County Commissioners of Platte County, Wyoming, and the Board of County Commissioners of Platte County, Wyoming, defendants.

That prior to the 10th day of December, A. D. 1917, the said Albert E. Hoffman, Ulyssis S. Jones and George S. Martin, constituting the Board of County Commissioners of Platte County, Wyoming pursuant to the request of a certain alleged petition for that purpose filed, begun certain proceedings with a view to running a certain public highway over and across the lands of the plaintiff company, and prior to the facts hereinafter set forth, actually began [fol. 121] the confiscation and appropriating of the lands of the plaintiff company for the purpose of running said road thereon; that plaintiff company protested against the confiscation and appropriation of its lands for the purposes above set forth, claiming, among other things:

(1) That the Public Road Act, under which said Board of County Commissioners pretended to act, was unconstitutional;

(2) That the Board of County Commissioners did not have jurisdiction of the subject matter, because of a defective petition and other gross irregularities;

(3) That the Board of County Commissioners were about to appropriate and confiscate the lands of the plaintiff without due process of law; and

(4) That the acts of the Board of County Commissioners constitut*ing* depriving plaintiff company of its property without just compensation.

That in order to protect its rights in that behalf, and to prevent the said defendants, Albert E. Hoffman, Ulyssis S. Jones and George S. Martin, as the Board of County Commissioners, from unlawfully [fol. 122] appropriating and confiscating the lands of said plaintiff, it filed in the office of the Clerk of the District Court, First Judicial District, County of Platte and State of Wyoming, its petition asking, among other things, that the said defendants, Albert E. Hoffman, Ulyssis S. Jones and George S. Martin, and each of them, their officers, attorneys and agents, be perpetually restrained from taking any further proceedings, or doing acts with respect to locating said proposed road as above set forth, and particularly from confiscating or appropriating any of the rights, properties and lands of said plaintiff, for the purpose of using same for a public road or high- as contemplated, or for any other unlawful purpose, and for such other relief as might seem to the court equitable.

That said petition was duly and regularly verified by the Oath of this affiant as President of said plaintiff company, and thereafter, on, towit, the 10th day of December, A. D. 1917, there was duly and regularly issued by G. D. McDougall, the Court Commissioner for Platte County, for the District Court, First Judicial District, of the State of Wyoming, in the absence of the Judge thereof, an order of injunction in the following words and figures, towit:

[fol. 123] "THE STATE OF WYOMING,
County of Platte, ss:

IN THE DISTRICT COURT, FIRST JUDICIAL DISTRICT

NORTH LARAMIE LAND COMPANY, a Corporation, Plaintiff,

vs.

ALBERT E. HOFFMAN, ULYSSIS S. JONES, and GEORGE S. MARTIN, Individually and as Constituting the Board of County Commissioners of Platte County, Wyoming, and the Board of County Commissioners of Platte County, Wyoming, Defendants.

ORDER OF INJUNCTION

To Albert E. Hoffman, Ulyssis S. Jones, and George S. Martin, individually and as constituting the Board of County Commissioners of Platte County, Wyoming, and the Board of the County Commissioners of Platte County, Wyoming, defendants:

The plaintiff in the above cause having commenced an action in the District Court of the First Judicial District of the State of Wyoming, in and for the County of Platte, against the above named defendants, and having prayed for an injunction against said defendants, requiring them to refrain from certain acts, in said petition, and hereinafter more particularly mentioned. On reading said petition in said action, duly verified by the oath of Harry H. Phillips, and it satisfactorily appearing to me therefrom, and from a certain affidavit filed in support thereof that it is a proper case for an inju-ction, and that sufficient grounds exist therefor, and the necessary undertaking having been given, and the Honorable William C. Mentzer, Judge of said Court being absent from Platte County, Wyoming.

It is therefore ordered by me, the Court Commissioner of said District Court, that until further order in the premises, you, the said Albert E. Hoffman, Ulyssis S. Jones and George S. Martin, individually and as constituting the Board of County Commissioners of Platte County, Wyoming, and the Board of County Commissioners of Platte County, Wyoming, and all your counsellors, attorneys, solicitors and agents, and all others acting in aid or assistance of you, and each and every one of you, do absolutely desist and refrain from taking any further proceedings or doing any acts with respect to locating the proposed county road particularly described in plain-
[fol. 124] tiff's petition in said action, across the lands of plaintiff described in the petition on file in this action, and particularly from confiscating or appropriating any of the rights, properties and lands of the plaintiff for such road, or any unlawful purpose; and it is further ordered by me that you, and each and every one of you absolutely desist and refrain from going or entering upon, or being upon the lands described in plaintiff's petition, or building, con-

structing and establishing any bridges or road or roads thereon. Bond required and furnished $1,500.

Dated this 10th day of December, A. D. 1917,

G. D. McDougall, Court Commissioner."

of which order of injunction said defendants, Albert E. Hoffman, Ulyssis S. Jones and George S. Martin had notice. That said plaintiff complied with said order with respect to filing a bond.

That thereafter, on, towit, the 5th day of February, A. D. 1918, said cause came on to be heard before the Honorable William C. Mentzer, Judge of the above court in term time at Wheatland, Platte County, Wyoming, and after a hearing thereof said Court took said cause under advisement and has not, to this affiant's knowledge or belief, up to the execution of this affidavit, rendered a finding or judgment thereon.

[fol. 125] That after such hearing of said cause as aforesaid and contrary to and in violation of the said injunction order so entered as aforesaid, said defendants, Albert E. Hoffman, Ulyssis S. Jones and George S. Martin, as Board of County Commissioners of Platte County, Wyoming, unlawfully, willfully and contemptuously disobeyed said injunction order as follows, towit:

That on said 9th day of March, A. D. 1918, said defendants, Albert E. Hoffman, Ulyssis S. Jones and George S. Martin, as said Board of County Commissioners, at a special session of said Board of County Commissioners of Platte County, appointed the respondents hereto, T. B. Dodge, E. L. Rumsey and W. A. Baker, as appraisers "to view the ground and fix the amount of damages sustained by" the plaintiff Company in the matter of running said road over the lands of plaintiff Company, and fixed as the time for viewing said ground and fixing the amount of damages, the 20th day of March.

That thereafter, on the 26th day of March, 1918, said defendants, Albert E. Hoffman and Ulyssis S. Jones acting as members of the Board of County Commissioners of Platte County, again held a meet-

[fol. 126] ing of the Board of County Commissioners, which special meeting was for the purpose of "appointing appraisers to view the ground and to appraise the damages which may be sustained by" the North Laramie Land Company by reason of the said proposed County Road at which said special meeting, upon motion duly made by said Albert E. Hoffman and seconded by said Ulyssis S. Jones, there were appointed as appraisers to view the ground and the land belonging to the North Laramie Land Company, over and across which the above proposed County Road is to traverse, and to assess the damages, if any, sustained by plaintiff Company by reason of the establishment of said proposed County Roaod, the respondents, T. B. Dodge, E. L. Rumsey and W. A. Baker, whose christian names are unknown to this affiant, and upon motion regularly made by said Albert E. Hoffman and seconded by said Ulyssis S. Jones, the day set for the viewing of said ground and land across which the said proposed County Road is to go was fixed as Saturday, March 30, A. D. 1918.

That thereupon, the said respondents, T. B. Dodge, E. L. Rumsey

and W. A. Baker, subscribed to the statutory oath required of them as such appraisers and entered upon their duties as appraisers, [fol. 127] and thereafter on, towit, the 27th day of March, 1918, served notice upon one David W. Brice, of Wheatland, Wyoming, that on March 30, 1918, the said appraisers would meet to appraise and fix the damages of plaintiff Company on account of said confiscation and appropriation of said lands for road purposes as aforesaid.

That thereafter, on, towit, the 30th day of March, 1918, said David W. Brice, caused to be served upon said respondents, T. B. Dodge, E. L. Rumsey and W. A. Baker, as appraisers, a protest in the following words and figures, towit:

"To W. A. Baker, E. L. Rumsey, and Thos. Dodge, appraisers.

GENTLEMEN: D. W. Brice, the person on whom said appraisers served notice on March 27th of their meeting on March 30th to appraise and fix the damages of the North Laramie Land Company on account of a County Road through their land does hereby protest against said appraisers taking any action in said matter on this 30th day of March, 1918, for the following reasons:

All of the officers of the said North Laramie Land Company live in Chicago, Ill., and the said notice given is too short to permit them to appear and protect their interests.

And attached hereto and made a part of this protest is a protest heretofore made by said North Laramie Land Company to the Boaord of the County Commissioners of Platte County, Wyoming, protesting against the locating of said road across the lands of said company. [fol. 128] Attached hereto and made a part of this protest is a copy of a writ of injunction issued in an action now pending in the District Court of Platte County, Wyoming, wherein said Company is Plaintiff and said Board of County Commissioners are defendant, and to this writ of injunction the attention of said appraisers is particularly called and invited.

Dated March 30, 1918.

D. W. Brice, the person on whom notice in this matter was served by the appraisers."

and attached thereto a certain protest heretofore served upon said Board of County Commissioners, and also a copy of the writ of injunction heretofore issued by said Court Commissioner, G. B. McDougall, on the 10th say of December, 1917, as above more fully set forth, and thereafter, said respondents, T. B. Dodge, E. L. Rumsey and W. A. Baker, had notice of and were amendable to the provisions of said injunction order. That notwithstanding such knowledge as aforesaid, and contrary to and in violation of the provisions of said injunction order, and over the protest of said David W. Brice, said respondents, T. B. Dodge, E. L. Rumsey and W. A. Baker, as such appraisers, unlawfully, willfully and contemptuously, and with the connivance and approval of said defendants, Albert E. Hoffman, Ulyssis S. Jones and George S. Martin, as County Com-

[fol. 129] missioners, on the 30th day of March, 1918, proceeded and viewed said proposed road the whole distance thereof through the said premises of said plaintiff Company, and thereupon assessed and determined that said premises of said plaintiff Company would not be rendered less valuable by the establishment of said road and that said plaintiff Company would not thereby sustain damages, and said respondents, T. B. Dodge, E. L. Rumsey and W. A. Baker, as appraisers, by and with the consent and connivance of said defendants, Albert E. Hoffman, Ulyssis S. Jones and George S. Martin, filed their certain report as such appraisers, addressed to the Honorable Board of County Commissioners of the County of Platte, in the State of Wyoming, in the following words and figures, towit:

"Road Appraisers' Report

To the Honorable Board of County Commissioners of the County of Platte, in the State of Wyoming:

The undersigned appraisers appointed by you to appraise and report on the claim of the North Laramie Land Co. for damages by reason of the establishment of the country road petitioned for by John Mullen and others, over and upon the following described premises of said complainant, (here give description of complainant premises over or upon which the road has been laid out by the road viewers):

[fol. 130] Beginning at the East one-quarter (E. ¼) corner of Section Twenty-two (22), Township Twenty-five (25) North, Range Sixty-eight (68) West, thence North on the boundary line of said Section Twenty-two (22) eighteen hundred and twenty (1,820) feet; thence North thirty-six (36) degrees fifteen (15) minutes East four hundred (400) feet; thence North three (3) degrees thirty (30) minutes West three hundred and eighty (380) feet; thence North thirty-nine (39) degrees fifteen (15) minutes West three hundred (300) feet to a point on the East boundary line of Section Fifteen (15), Township Twenty-five (25) North, Range Sixty-eight (68) West one hundred and fifteen (115) feet North of the Southeast corner of said Section Fifteen (15); thence North on East boundary line of said Section Fifteen (15) twenty-five hundred and twenty-five (2,525) feet to the East one-quarter (E. ¼) corner of said Section Fifteen (15); thence North on said boundary line one-fourth mile to the Northeast corner Southeast quarter (S. E. ¼) of Northeast quarter (N. E. ¼) said Section Fifteen (15); thence West on North boundary line of said forty one-fourth mile to the Northwest corner of said forty; thence North on forty line three-fourths mile to the Northeast corner Northwest Quarter (N. W. ¼) Southeast quarter (S. E. ¼) Section Ten (10), Township Twenty-five (25) North, Range Sixty-eight (68) West; thence West on the South side of the North boundary line of said forty one-fourth mile to the Northwest corner of said forty, and there ending.

Do hereby report that upon first being duly sworn to faithfully and impartially discharge our duties respecting said matter. We, on the 30th day of March, A. D. 1918 proceeded and viewed said proposed road the whole distance thereof through said premises of said claimant, and thereupon we have assessed and determined that said premises will not be rendered less valuable (state amount if any) by the establishment of said road and that said complainant *and* will not thereby sustain damages.

[fol. 131] We have arrived at the above conclusion that the claimant, to-wit The North Laramie Land Company will be benefited by the establishment of said road to the amount of $3,000.00, and that the said claimant will only be damaged by the necessity of fencing the amount of $1,200.00 and by the amount of the land actually taken by reason of the establishment of said road the amount of not more than $550.00, by reason of which establishment of said road the claimant has been benefited instead of damaged.

T. B. Dodge, E. L. Rumsey, W. A. Baker, Appraisers."

This affiant avers that all of said acts of said defendants, Albert E. Hoffman, Ulyssis S. Jones and George S. Martin, as said Board of County Commissioners, and said respondents, T. B. Dodge, E. L. Rumsey and W. A. Baker, as such appraisers, after the 10th day of December, A. D. 1917, were in direct violation of the injunction order so entered as aforesaid, and that said defendants and said respondents by their acts as aforesaid are guilty of a contempt of [fol. 132] court, and by reason thereof should be cited to appear and show cause, if any they may have, why they should not be punished for such contempt.

And further affiant saith not. Harry H. Phillips.

Subscribed and sworn to before me this 15 day of April, A. D. 1918. Burrell J. Cramer, Notary Public. Com. Exp. Oct. 24, 1920. (Seal of Burrell J. Cramer, Notary Public, Cook County, Ill.)

[fol. 133] EXHIBIT IN EVIDENCE

The Man's Store of Wheatland

Wheatland, Wyoming, May 7, 1918.

North Laramie Land Company in Account with G. D. McDougall, Court Commissioner

Date		Charges	Credit	Balance
1917.				
Dec. 10.	Case of North Laramie Land Co. vs. County Commissioners to Temporary Injunction....	$8.00	....	....

Errors in accounts are easily corrected if discovered in time. For this reason we make a practice of sending out statements every month for the purpose of comparison. Check this over and advise promptly if any error exists.

THE STATE OF WYOMING,
County of Platte, ss:

IN THE DISTRICT COURT, FIRST JUDICIAL DISTRICT

This instrument was filed in this office on the 7 day of May 1918.
Harvey C. Corbridge, Clerk of the District Court.

[fol. 134] IN THE DISTRICT COURT OF PLATTE COUNTY

[Title omitted]

ORDER TO SHOW CAUSE AND RETURN

To Albert E. Hoffman, Ulyssis S. Jones, George S. Martin, T. P. Dodge, E. L. Rumsey, and W. A. Baker:

You, and each of you, will take notice that the plaintiff named above has filed herein a petition, supported by affidavit wherein it is alleged that you, and each and every one of you, are guilty of contempt of Court, for the reason that you have violated a certain order of injunction made and entered in said cause on the 10th day of December, A. D. 1917, by the Honorable G. D. McDougall, Court Commissioner of said Court, and said petition prays that you, and each and every one of you, be cited to appear and show cause, if any you have, why you should not be punished for contempt of Court in violating said order of injunction.

You, and each and every one of you, are therefore required to appear before the District Court of Platte County, Wyoming, at the Court Room of said Court in the Town of Wheatland, on the 9th day of May, A. D. 1918 at Nine o'clock A. M. of said date, then and there to show cause, if any you have, why you should not be punished for contempt of Court in violating said order of injunction.

Dated this 2nd day of May, A. D. 1918.

Geo. Milne, Court Commissioner.

THE STATE OF WYOMING,
County of Platte, ss:

I, A. S. Roach, Sheriff of Platte County Wyo. do hereby certify that I have served this citation on all persons named therein by leaving with each of them a true copy of same signed by Geo. Milne, Court Commissioner.

A. S. Roach, Sheriff.

Mileage	2.00
Driving	2.25
	4.25

[fol. 135] Clerk's certificate to foregoing paper omitted.

[fol. 136] IN THE DISTRICT COURT OF PLATTE COUNTY

[Title omitted]

ANSWER TO ORDER TO SHOW CAUSE—Filed May 9, 1918

Come now the above named defendants and respectfully show to the Court as follows:

Said defendants admit that said defendants met at a special session on the 9th day of March A. D. 1918, and again on the 26th day of Marsh A. D. 1918 for the purpose of appointing appraisers to view the ground and assess the damages of the North Laramie Land Company in connection with the proposed establishment of a county road as mentioned in plaintiff's petition, but said defendants deny that the acts of said defendants A. E. Hoffman, Ulyssis S. Jones, George S. Martin, T. B. Dodge, E. L. Rumsey and W. A. Baker were in direct violation of the injunction order issued by the Honorable Court Commissioner G. D. McDougall, and if said actions were in violation of said order said defendants further show that said order of injunction was never reviewed by the District Court as is required by section 926 of the Wyoming Compiled Statu-es of 1910, and therefore said [fols. 137–139] order of injunction is of no effect and force.

Defendants further state that the actions of said defendants in the appointment of said appraisers were not had with intention to violate any order of court or the order of injunction issued by said Court Commissioner, but that said action was merely taken by said commissioners in order to cure a defect in their proceedings in the establishment of said county roard, the irregularity of which proceedings the plaintiffs attacked in the petition for a permanent injunction.

Wherefore defendants respectfully ask that the petition for a citation to appear and show cause be dismissed and that the costs of this proceeding be taxed against the plaintiff.

C. A. Paige, Attorney for Defendants.

Jurat showing the foregoing was duly sworn to by A. E. Hoffman omitted in printing.

In duplicate. Second copy omitted.

[fol. 140] IN THE DISTRICT COURT OF PLATTE COUNTY

[Title omitted]

MOTION TO STRIKE ANSWER—Filed May 9, 1918

Comes now the plaintiff and moves the court to strike the answer of defendants "to petition for citation to appear to show cause" for the reason that said alleged answer does not constitute a good and sufficient defense to the matters set forth in plaintiff's petition and is otherwise defective in substance and form.

North Laramie Land Company, by O. O. Natwick and Pam & Hurd, Attys.

[File endorsement omitted.]

[fol. 141] EXHIBIT IN EVIDENCE

Saturday, March 9th, 1918.

The Board of the County Commissioners of Platte County met this day in special session. Present A. E. Hoffman, Chairman, U. S. Jones and Geo. S. Martin, Commissioners.

In the matter of the claim of the North Laramie Land Company for road damages filed in the matter of Road Petition No. 83, the following appraisers were appointed, to-wit: T. B. Dodge, E. L. Rumsey and W. A. Baker. March 20th was fixed as the day for the appraisers to view the ground and fix the amount of damages sustained by the claimant.

The Board then adjourned.

(Signed) Bessie S. Fitz, Clerk of Board.

Approved: A. E. Hoffman, Chairman of the Board.

[fol. 142] County Clerk's Office, Wheatland, Platte County, Wyoming

March 26, 1918.

The Board of the County Commissioners in and for the County of Platte, State of Wyoming, met this day, to-wit: on the 26th day of March, A. D. 1918, at a special meeting for the purpose of appointing appraisers to view the ground and appraise the damages which may be sustained by the North Laramie Land Company, by reason of the proposed County Road Petition No. 83. Present, A. E. Hoffman, Chairman, and U. S. Jones, Commissioner.

Upon motion duly made by A. E. Hoffman and seconded by U. S. Jones, the following persons were appointed as appraisers to view the ground and the land belonging to the North Laramie Land Company over and across which the above proposed County Road is to traverse and to assess the damages if any, sustained by the North

Laramie Land Company by reason of the establishment of said proposed county road:

T. B. Dodge, E. L. Rumsey and W. A. Baker, who are three suitable and disinterested electors of the County of Platte, State of Wyoming.

Upon motion duly made by A. E. Hoffman and seconded by U. S. Jones, the day set for the viewing of the said ground and land across which the said proposed County road is to go was Saturday, the 30th day of March, 1918. Said appraisers were ordered to file their report in writing with the County Clerk of Platte County, Wyoming within thirty days after the date of their appointment, in which report they shall fix the amount of damages sustained by the North Laramie Land Company, if any there be sustained.

The Board then adjourned.

(Signed) Bessie S. Fitz, Clerk of the Board

Approved: A. E. Hoffman, Chairman of the Board.

[fol. 143] Appointment of Appraiser

Wheatland, Wyo., March 26, 1918.

To T. B. Dodge, E. L. Rumsey, and W. A. Baker.

DEAR SIR-: You are hereby notified that you have been, on March 26, A. D. 1918 appointed as appraised of damages occasioned by the establishment of county road petitioned for by John Mullin and others; that the follow- named persons are claimants for damages on account of the location of said road; that the amount of damages asked by each claimant, viz:

North Laramie Land Co., damages claimed, as per enclosed copy.
—— ——, damages claimed, ——.
—— ——, damages claimed, ——.
—— ——, damages claimed, ——.
—— ——, damages claimed, ——.

In accordance with Section 2528 of the Compiled Statutes, 1910, March 30, A. D. 1918 was fixed by the Board as the time for the appraisers to view the ground.

Your report in writing must be filed within thirty days after March 26 A. D. 1918. The law relating to your duties as appraisers, as contained in Section 2530 of compiled Statutes 1910, is as follows:

"Sec. 2530. The said appraisers shall, within ten days after receiving notice of their appointment, meet at some convenient place, on the line of said proposed or altered road, and take and administer to each other, an oath or affirmation to faithfully and impartially discharge their duties. They shall then view the ground, so far as they shall deem it necessary, and fix the amount of damages sustained by each claimant, after allowing for all benefits that may ac-

crue to each claimant, by reason of th elocation or alteration of said proposed road. They, or the majority of them shall, as soon as practicable, after performing their said duties, make a report in writing to the county clerk of their doings, stating that they were so sworn or affirmed, as aforesaid, before performing their duties and fixing the amount of damages, if any, sustained by each claimant, allowing and deducting for benefits; and where they have disallowed claims for damages they shall so state in their reports and they shall immediately transmit their report, when made, to the County Clerk. They shall, whenever they can conveniently do so, notify the claimants or their agents, of the place of their meeting and may hear such evidence as they may deem necessary, in determining the amount of damages fixed by them. They are hereby authorized to administer oaths to each other and to such witnesses as they may hear. If any one of them shall fail or refuse to perform his duty, the other two appraisers shall serve and shall appoint a suitable and disinterested elector in his place, who shall be within easy access, and shall be sworn or affirmed in like manner as the other two appraisers, and the facts of such appointment and qualification shall be stated in said report to the County Clerk. The said appraisers shall each receive for his compensation such reasonable sum as the Board of County Commissioners shall allow."

Bessie S. Fitz, County Clerk.

[fol. 144] STATE OF WYOMING,
County of Platte, ss:

I, W. A. Baker, duly appointed by the Board of County Commissioners as appraiser for the proposed road known as office No. 83, do hereby solemnly swear (or affirm) that I will faithfully and impartially perform the duties of appraiser according to law.

(Signed) W. A. Baker.

Subscribed and sworn to before me this 30th day of March, 1918. Bessie S. Fitz, County Clerk, by G. S. Agnew, Deputy. (Seal County of Platte, State of Wyoming, County Clerk.)

THE STATE OF WYOMING,
County of Platte, ss:

I, E. L. Rumsey, duly appointed by the Board of County Commissioners, as appraiser for the proposed County Road known as Office No. 83, do hereby solemnly swear (or affirm) that I will faithfully and impartially perform the duties of appraiser according to law.

(Signed) E. L. Rumsey.

Subscribed and sworn to before me this 30th day of March, 1918. Bessie S. Fitz, County Clerk, by G. S. Agnew, Deputy. (Seal County of Platte, State of Wyoming, County Clerk.)

THE STATE OF WYOMING,
County of Platte, ss:

I, T. B. Dodge, duly appointed by the Board of County Commissioners as appraiser for the proposed County road known as Office No. 83, do solemnly swear (or affirm) that I will faithfully and impartially perform the duties of appraiser according to law.

(Signed) T. B. Dodge.

Subscribed and sworn to before me this 30th day of March 1918. Bessie S. Fitz, County Clerk, by G. S. Agnew, Deputy. (Seal County of Platte, State of Wyoming, County Clerk.)

[fol. 145] Protest

To W. A. Baker, E. L. Rumsey, and Thos. Dodge, appraisers.

GENTLEMEN: D. W. Brice, the person on whom said appraisers served notice on March 27th, of their meeting on March 30th to appraise and fix the damages of the North Laramie Land Company on account of a County road through their land does hereby protest against said appraisers taking any action in said matter on this 30th day of March, 1918, for the following reasons:

All of the officers of the said North Laramie Land Company live in Chicago, Ill., and the said notice given is too short to permit them to appear and protect their interests.

And attached hereto and made a part of this protest is a protest heretofore made by said North Laramie Land Company to the Board of the County Commissioners of Platte County, Wyoming, protesting against the locating of said road across the lands of said company.

Attached hereto and made a part of this protest is a copy of a writ of injunction issued in an action now pending in the District Court of Platte County, Wyoming, wherein said Company is Plaintiff and said Board of County Commissioners are defendant, and to this writ of injunction the attention of said appraisers is particularly called and invited.

Dated March 30, 1918.

D. W. Brice, the person on whom notice in this matter was served by the appraisers.

[fol. 146] To the Board of County Commissioners of Platte County, Wyoming:

In the matter of the petition for the location of a road beginning at a point on the east boundary line of section twenty-seven (27), township twenty-five (25) north, range sixty-eight (68) west, three hundred (300) feet south of the east one-quarter (E. ¼) corner of said section and ending at the northwest corner of section four (4) of township twenty-five (25) north, range sixty-eight (68) west, and intersecting county road number 114.

You are hereby notified that the North Laramie Land Company, a corporation organized and existing under and by virtue of the laws of the State of Wyoming, is the owner and interested in lands bordering on either side, or both sides, of, and the land over which that portion of a certain road is proposed to be located as follows, towit:

Beginning at the East one-quarter (E. ¼) corner of Section Twenty-two (22), Township Twenty-five (25) North, Range Sixty-eight (68) West, thence North on the boundary lines of said Section Twenty-two (22) eighteen hundred and twenty (1820) feet; thence North Thirty-six (36) degrees fifteen (15) minutes East four hundred (400) feet; thence North three (3) degrees thirty (30) minutes West three hundred and eighty (380) feet; thence north thirty-nine (39) degrees fifteen (15) minutes West three hundred (300) feet to a point on the East boundary line of Section Fifteen (15), Township Twenty-five (25) North, Range Sixty-eight (68) West one hundred and fifteen (115) feet North of the Southeast corner said Section Fifteen (15); thence North on East boundary line of said Section Fifteen (15) twenty-five hundred and twenty-five (2525) feet to the east one-quarter (E. ¼) corner of said Section Fifteen (15); thence North on said boundary line one-fourth mile to the Northeast corner Southeast quarter (S. E. ¼) of Northeast quarter (N. E. ¼) said Section Fifteen (15); thence West on North Boundary line of said forty one-fourth mile to the Northwest corner of said forty; thence North on forty line three-fourths mile to the Northeast corner Northwest quarter (N. W. ¼) Southeast Quarter (S. E. ¼) Section Ten (10), Township Twenty-five (25) North, Range Sixty-eight (68) West; thence West on the South side of the North boundary line of said forty one-fourth mile to the Northwest corner of said forty and there ending.

[fol. 147] You are further notified that said North Laramie Land Company objects to and protests against the locating of said road upon the lands or any part of the same so owned by said North Laramie Land Company and to the proceedings relating thereto, and every part thereof, for the reasons:

1. The Board of County Commissioners of Platte County, Wyoming, is without power to so locate said road.

2. That the proceedings of the Board of County Commissioners in locating said road contravenes Sections 6, 7 and 33 of Article 1 of the Constitution of the State of Wyoming, and contravenes the Fourteenth Amendment to the Constitution of the United States of America.

3. That the statutes of the State of Wyoming purporting to confer upon the Board of County Commissioners of Platte County, authority to locate said road, are void as being in contravention to Sections 6, 7 and 33 of Article 1 of the Constitution of the State of Wyoming, and in contravention to the 14th Amendment to the Constitution of the United States of America.

4. That Sections 18 and 19 of Chapter 69 of the Laws of 1895, being Sections 2530 and 2531 of the Wyoming Compiled Statures, are void as being in contravention to Sections 6, 7 and 33 of Article 1 of the Constitution of the State of Wyoming, and in contravention of the 14th Amendment to the Constitution of the United States of America.

5. That the proceedings and acts of the Board of County Commissioners of Platte County, Wyoming, relating to the locating of said road upon the lands, or any part of the same as aforesaid, are arbitrary, confiscatory, unlawful, void, constitute depriving the said North Laramie Land Company of its property without due process of law, and without just compensation.

[fol. 148] You are further notified that because of the reasons aforesaid, the said North Laramie Land Company proposes to institute suit in a court of competent jurisdiction to restrain said Board of County Commissioners of Platte County in its unlawful acts and proceedings and for such other relief as it may, in law or equity, have in the premises.

North Laramie Land Company, by —— ——, President.
O. O. Natwick, Attorney for North Laramie Land Company.

Attest: —— ——, Secretary.

[fols. 149-151] Copy of Writ of Injunction—Omitted, printed side page 94 ante

[fol. 152] Road Appraisers' Report

To the Honorable Board of County Commissioners of the County of Platte, in the State of Wyoming:

The undersigned appraisers appointed by you to appraise and report on the claim of The North Laramie Land Co. for damages by reason of the establishment of the county road petitioned for by John Mullen and others, over and upon the following described premises of said complainant (here give description of complainant

premises over or upon which the road has been laid out by the road viewers):

Beginning at the East one-quarter (E. ¼) corner of Section Twenty-two (22), Township Twenty-five (25) North, Range Sixty-eight (68) West, thence North on the boundary line of said Section twenty-two (22) eighteen hundred and twenty (1,820) feet; thence North thirty-six (36) degrees fifteen (15) minutes East four hundred (400) feet; thence North three (3) degrees thirty (30) Minutes West three hundred and eighty (380) feet; thence North thirty-nine (39) degrees fifteen (15) minutes West three hundred (300) feet to a point on the East boundary line of Section Fifteen (15), Township Twenty-five (25) North, Range Sixty-eight (68) West one hundred and fifteen (115) feet North of the Southeast corner of said Section Fifteen (15); thence North on East boundary line of said Section Fifteen (15) twenty-five hundred and twenty-five (2,525) feet to the East one-quarter (E. ¼) corner of said Section Fifteen (15); thence North on said boundary line one-fourth mile to the Northeast corner Southeast Quarter (S. E. ¼) of Northeast quarter (N. E. ¼) said Section Fifteen (15); thence West on North boundary line of said forty one-fourth mile to the Northwest corner of said forty; thence North on forty line three-fourths mile to the Northeast corner Northwest quarter (N. W. ¼) Southeast Quarter (S. E. ¼) Section Ten (10), Township Twenty-five (25) North, Range Sixty-eight (68) West; thence West on the south side of the North boundary line of said forty one-fourth mile to the Northwest corner of said forty, and there ending.

Do hereby report that upon first being duly sworn to faithfully and impartially discharge our duties respecting said matter. We, on the 30th day of March A. D. 1918 proceeded and viewed said proposed road the whole distance thereof through said premises of said claimant, and thereupon we have assessed and determined that said premises will not be rendered less valuable (state amount if any) by the establishment of said road and that said complainant will not thereby sustain damages.

We have arrived at the above conclusion that the claimant, to-wit The North Laramie Land Company will be benefited by the establishment of said road to the amount of $3,000.00, and that the said claimant will only be damaged by the necessity of fencing the amount of $1,200.00 and by the amount of the land actually taken by rea-
[fol. 153] son of the establishment of said road the amount of not more than $550.00, by reason of which establishment of said road the claimant has been benefited instead of damaged.

T. B. Dodge, E. L. Rumsey, W. A. Baker, Appraisers.

[fol. 154] THE STATE OF WYOMING,
County of Platte, ss:

I, Bessie S. Fitz, County Clerk and Ex-Officio Register of Deeds within and for the County and State aforesaid, do hereby certify the

within and foregoing to be true and correct copies of all of the proceedings had by the Board of County Commissioners, and all papers filed in the matter of Road Petition Office No. 83 since March 8, 1918, so full and entire as the same appear on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said County at my office in the City of Wheatland, Wyoming, this 3rd day of April A. D. 1918.

Bessie S. Fitz, County Clerk and ex-Officio Register of Deeds of Platte County, Wyoming, by G. S. Agnew, Deputy. (Seal Platte County, the State of Wyoming, County Clerk.)

[fol. 155] IN THE DISTRICT COURT OF PLATTE COUNTY

[Title omitted]

STIPULATION AND ORDERS EXTENDING TIME

It is hereby stipulated and agreed by and between the parties by their respective attorneys that the time for plaintiff to file in motion for a new trial in both the injunction proceedings and contempt proceedings be extended by appropriate order of court until June 9, 1918.

O. O. Natwick and Pam & Hurd, Attys. for Pltf. C. A. Paige, Atty. for Defendants.

[fol. 156] [Title omitted]

It having appeared that the counsel of both parties have stipulated to that effect, it is ordered that the time for the plaintiff to file its motion for new trial in the above cause for injunction be and hereby is extended to and including June 9, 1918.

Enter.

William C. Mentzer, Judge.

[fol. 157] Clerk's certificate to foregoing paper omitted.

[fol. 158] [Title omitted]

It having appeared that the counsel of all parties have stipulated to that effect, it is ordered that the time for the plaintiff to file its motion for new trial in the above contempt proceedings be and it hereby is extended to and including June 9, 1918.

Enter.

William C. Mentzer, Judge.

[fol. 159] Clerk's certificate to foregoing paper omitted in printing.

[fol. 159a] In the District Court of Platte County

[Title omitted]

Findings and Decree

The above entitled cause having come on for hearing on the 4th day of February, 1918, Kline & Natwick and Burrill J. Cramer appearing for plaintiff, and C. A. Paige and Clark & Haggard appearing for defendants, and the Court having heard the evidence, and being advised in the premises, does find for the defendants;

Therefore, it is now ordered, adjudged, and decreed that plaintiff be denied a perpetual injunction against defendants or any of them; That the order of temporary injunction heretofore granted by G. D. McDougall, Court Commissioner, against defendants, on the 10th day of December, 1917, be vacated and dissolved; and that defendants recover of plaintiff their costs, and the plaintiff be given an exception.

Done this 9th day of May, 1918.

William C. Mentzer.

[fol. 160] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 161] In District Court of Platte County

Argument of Counsel for Plaintiff

May it please the court:

Your Honor will recollect that, among other things, during the oral argument, we contended that there was no order entered by the Board of County Commissioners, from which the North Laramie Land Company could appeal to review the actions of the Board of County Commissioners in dealing with the question of damages sustained by the North Laramie Land Company. Your Honor will recollect the argument was made in connection with our contention that the proceedings of the Board of County Commissioners constituted taking our property without due process of law for three reasons:

First. That no appraisers were appointed to consider our claim for damages and no opportunity was accorded us to be heard upon the question of amount of damages.

Second. That no order was entered by the Board of County Commissioners passing upon our claim for damages, from which we could appeal. And

[fol. 162] Third. That the order*ed* entered completely ignored our claims.

We have no desire to re-argue all of these various points, but we do believe we ought to call your Honor's attention to some additional facts. Your Honor quite properly criticized the Board of County Commissioners and the County Attorney, because of the loose method of procedure adopted by the Board of County Commissioners, and properly advised them that in the future if they endeavored to follow statutory proceedings for the purpose of taking property of others, they ought to be prepared to make a semblance of showing that they had complied with the statute.

Upon this subject matter of appraisers, Section 2528 provides that the County Commissioners shall be "suitable and disinterested electors of the County."

Upon the argument your Honor suggested that in view of the fact that such appraisers reported that they "viewed said proposed road the whole distance thereof through said premises of said claimant" [fol. 163] and report that said complainant will not thereby sustain damages, that such report prima facially indicated that the appraisers had passed upon our rights to damages, notwithstanding no claim therefor was on file.

Assuming, for the purpose of this point, such contention to be correct (which, of course, we earnestly insist is not the proper interpretation), we maintain that the record fails to show that the appraisers had the necessary qualification to act as appraisers. As we said before, the act specifically provides that the appraisers shall be "suitable and disinterested electors of the County." There is nothing in the appointment of said appraisers and the record of the Board of County Commissioners showing that said appraisers are suitable and disinterested electors of the County. The record is silent upon the question of qualifications. The original appointment is merely addressed to the three appraisers and notifies them of the date of their appointment and the names and amounts of various [fol. 164] persons making claim for damages. It fixes the time when the appraisers shall view the ground and the day when such appraisers must report in writing. Then follows the oaths of the appraisers and then follows the report of the appraisers.

With reference to the order that was entered, the record merely states the following:

"Friday, June 8, 1917.

"In the matter of proposed County Road (Office No. 83) claims for damages amounting to $455.00 having been filed, C. Hauf, George Foxton and J. W. Vaudrey were appointed appraisers, and June 15th as the time for the appraisers to fix the amount of damages."

There is no recital in the record as to the place of residence of any of the appraisers, how long they have resided in the State, etc., etc. We content that the record must affirmatively show upon its face that the appraisers appointed had the qualifications provided by the statute, and that if the record fails to show such facts such omission

is jurisdictional and any report made by the appraisers or order entered thereupon is absolutely void and cannot be made the basis of appropriating and confiscating the lands of the North Laramie Land Company, or any other person, much less be made [fol. 165] the basis of an appeal as provided by the statutes. This question has been squarely passed upon in the case of Nichols v. City of Bridgeport, as reported in 23 Conn., at page 189. In that case, which was condemnation proceedings, the record failed to disclose that the appraisers were freeholders of the City and the court's conclusion was that the appraisal made was void and there was nothing to appeal from. In addition to that point, the record reversed the proceedings below upon other points, but there was a special opinion written by Chief Justice Church and Justice Storrs, stating that the jurisdictional defect, as above stated, was alone sufficient to justify a reversal of the proceedings below.

The court, in the principal opinion, used the following language:

"Some portion of this claim is well founded, undoubtedly. The appointment of appraisers to estimate the damages to proprietors caused by the laying out and extension of John Street does not show that the persons appointed were either freeholders or residents of [fol. 166] Bridgeport, and although the warrant for the collection of the assessment against the plaintiff, which professes to give a history of all the proceedings, does state that those persons were in fact freeholders of the city, yet we cannot think this is proper evidence of the fact. This fact can no more be shown by a statement in the warrant than a judgment can be shown by a statement in an execution, or by parol testimony, which no one would claim to be proper. The rule undoubtedly is, that where it is attempted to acquire title to land, or to take from a proprietor his right to the unrestrained use of it, in invitum, and under the provisions of positive law, and in derogation of the common law, every requisite of the statute must be complied with, and should appear on the face of the proceedings under which the property is attempted to be taken; Mitchell v. Kirkland, 7 Conn. 229; Hobart v. Frisbie, 5 Id. 592; Booth v. Booth, 7 Id. 350.

"And where it becomes necessary for a party to show a fact like this, the due appointment of certain officers to make an appraisal, it should be shown by the record, unless it appears the record is lost, in which event secondary evidence of its contents may be proved; Griffin v. Rising, 2 Cush. 75; nor can we sanction the defendants' claim that, by his appeal to a judge of the superior court, or his hearing before freeholders appointed by the judge, the plaintiff waived the irregularity. It appears to us that the fact that the persons whom the mayor was bound to appoint appraisers to assess damages to persons whose lands were taken for public use were to be freeholders of the City was a jurisdictional fact, which could only be shown by the appointment itself or the record of it; and [fol. 167] if the appraisers appointed in this case had no jurisdiction and no power to make any appraisal because it did not appear that they were freeholders of the city, then it seems the

appraisal they did make was void, and there was nothing to appeal from."

And the special opinion of Justices Church and Storrs was as follows:

"Church, C. J., and Storrs, J., were of opinion that as it did not appear on the face of the proceedings, in laying out the street or highway for the benefits of which the plaintiff was assessed, that the persons appointed to estimate and who estimated the damages sustained by him by such lay-out, were freeholders of the city of Bridgeport, as was required by the thirty-eighth section of the charter, under which those proceedings took place, the said proceedings and laying out were ineffectual and void; and that this defect in the proceedings was not cured by the subsequent proceedings; and that as the said street or highway was not legally established, the plaintiff was not liable, under the preceding section, to be assessed for benefits received by him by said laying out, and consequently was entitled to recover the sum collected of him for such benefits."

[fol. 168] IN THE DISTRICT COURT OF PLATTE COUNTY

[Title omitted]

BRIEF FOR PLAINTIFF

Upon the conclusion of oral arguments, the court expressed a willingness to hear further upon two subjects:

First. Had the Board of County Commissioners the right to extend the time for the North Laramie Land Company to file its objections and claim for damages beyond the time originally fixed by [fol. 169] the Board of County Commissioners for the filing of such objections and claim for damages; and

Second. Should the claim of the North Laramie Land Company have been more specific, the claim having been made as follows:

1. That the benefits to be derived by the North Laramie Land Company from the location of said road are much less than the damages said North Laramie Land Company will sustain by reason of the location of said road.

2. That any alleged benefits to be derived by the North Laramie Land Company cannot be charged or set off against the value of the land actually taken for the purpose of said road.

3. That if the road is located as undertaken by the Board of County Commissioners of Platte County, that it, the said North Laramie Land Company, will sustain great damages, for which damages it hereby makes claim.

[fol. 170] 1

With reference to the first question, we think that there is a conclusive answer found in the fact that when a Board of County Commissioners acts under statutes of this character, it acts as a court. True enough, a court of special and limited jurisdiction, but nevertheless a court.

The Supreme Court of Colorado, in a very recent case entitled Goerke, et al. v. Town of Manitou, 139 Pac. Rep. 1049, used the following language:

"Board of County Commissioners when engaged in hearing matters respecting the opening of roads and streets and assessing benefits and damages are exercising judicial functions and are regarded as courts of special and limited jurisdiction."

It is fundamental that courts have inherent power to control their own procedure. Therefore, it is not necessary that there be any statutory provisos relating thereto to authorize a court, whether of general or special and limited jurisdiction, to grant continuances, [fol. 171] permit amendments, fix the time for filing pleadings and determining when a case shall be tried.

About this we think there can be no doubt, but there is a more complete answer to be found in the statutes of Wyoming themselves. We think the statutes have expressly authorized the Board of County Commissioners to fix the time when claimants and objectors may file their claims and objections. Section 2524 provides that:

"If the Board of County Commissioners shall determine to establish * * * any road, they shall ap-oint a day not less than thirty days after such determination, on or before which day all objections to the establishment * * * of the proposed road, and claims for damages by reason thereof, shall be filed with the County Clerk."

Therefore, the power to fix the day when such claims for damages and objections shall be filed is expressly vested in the Board of County Commissioners, the only limitation being that the day must not be less than thirty days after the determination by the Board of County Commissioners to establish such road.

[fol. 172] Now, what is their next obligation? Section 2525 as amended and as originally enacted merely requires that the Board of County Commissioners shall give notice of a particular character to all parties interested of the day said Board of County Commissioners has fixed for the filing of objections and claims for damages. Nothing in that provisio limits the control of the Board of County Commissioners over the day for the filing of said objections and claims for damages. Then follows Section 2526, providing that:

"No objections or claims for damages shall be filed or made after the noon of the day fixed for filing the same, and if no objections or claims for damages are filed on or before noon of the day fixed

for filing the same, they shall be disregarded and not considered, and shall be deemed to have been waived and barred."

When reference is made to noon f the day fixed, it has reference to the day fixed by the Board of County Commissioners. The proviso is not that if no objections or claims for damages shall be filed or made after the noon of the day named in the notice required by the preceding section, but that the proviso is that if the claims [fol. 173] and objections are not made before noon of the day fixed by the Board of County Commissioners, such claim shall be considered waived and barred; no limitation whatever upon the prior section, expressly conferring upon the Board of County Commissioners the right to fix the day when such objections and claims shall be filed. What then, is there to prevent the Board of County Commissioners extending the time for any claimant or objector to file his claims or objections? The only restrictive clause was for the purpose of protecting claimants and objectors, so that it would not be possible for the Board of County Commissioners to fix a time so short after the determination of said Board to open the road, as to virtually cut off all claims and objections, but beyond that restriction, the statute clearly empowers the Board of County Commissioners to fix any day they see fit for the filing of such claims and objections, and this necessarily carries with it the power to grant continuances and extensions just as was done in this case. [fol. 174] The objections and claims for damages contemplated by the statutes constitute the plea of the claimant or objector. There is nothing different between this procedure than the procedure of a court extending the time for a defendant to file his answer, which it must be granted, is an inherent power of any court, whether of general or special and limited jurisdiction. Coupled to that the specific authorization by the statutes of the Board of County Commissioners to fix the time when such objections and claims for damages are to be filed, there can be no doubt but that the Board of County Commissioners had both implied and expressed authority to extend the time as they did.

Now, who is to raise the objection? If the Board of County Commissioners by its own conduct causes a claimant and objector to refrain from filing an objection, this court would not permit such Board to take advantage of its own misleading conduct. In [fol. 175] the case of Board of Supervisors v. Horton, et al., as reported in 39 N. W. at page 394, the Board of County Commissioners undertook to take advantage of an alleged defective notice of a special meeting held by said Board of County Commissioners. There had been a regular meeting of the Board of County Commissioners, at which certain action was taken by the Board with reference to letting a bridge contract. A special meeting was subsequently held, in which the former action was reconsidered; the notice for the special meeting was claimed to be illegal and insufficient, but notwithstanding such supposed illegality and insufficiency the complaining members of the Board of County Commissioners took part

in the whole of such meeting and attempted by so doing to accomplish their purposes and the court held that they would be estopped from denying the sufficiency of the notice of the special meeting.

If this objection came from the Board of County Commissioners, this court would be compelled to hold that such Board of County [fol. 176] Commissioners would be estopped to deny their authority to extend the time for the filing of such objections and claims, even though this court was of the opinion that the Board of County Commissioners had no authority to grant such extension.

But as we have seen before, the power to grant such extension was not only an inherent power of the Board of County Commissioners, but was an express power expressly conferred by the provisions of the Wyoming statutes in such cases made and provided.

2

With reference to the second question, we think a careful consideration of the statutes and authorities upon the subject will demonstrate that the petition was sufficient. The only reference made to the filing of a petition is found in Sections 2524, 2525, and [fol. 177] 2526 of the Wyoming Compiled Statutes above referred to. In each instance the language is "objections or claims for damages." There is no provision as to how said objections or claims for damages shall be presented.

We again wish to call the court's attention to the fact that the Board of County Commissioners were exercising its judicial functions as distinguished from its ministerial functions. Any proviso of the Wyoming statute relating to the procedure of the Board of County Commissioners and its allowance of claims, in the performance of its duties as a ministerial body, can have no application to the procedure expressly provided for by the statutes, when the Board of County Commissioners acts as a judicial body or court.

We reiterate our statement that the objections and claims for damages permitted to be filed by persons whose lands are to be taken is equivalent to the plea of such claimant or objector. No special form of presenting the claim, in our judgment, is necessary. There [fol. 178] is no doubt but that the Board of County Commissioners has always regarded the matter in the same light, hence, said Board of County Commissioners has never raised any objection to the sufficiency of the objections and claims for damages filed.

Lon Heaton's objections and claims for damages were:

"The damage to my property and cost of moving and building new fence will be $250.00. And I object to County taking over any of my ditches in road right of way at any price."

R. G. Eddy specified:

"I have received notice of a road that goes along the east side of my place and I am asking for $50.00 damage, which I think is just about what it will cost me to put up a good fence."

F. S. Mitchell said:

"In view of the fact that proposed county road * * * in running through my ranch cuts (certain property) completely off from the rest of the ranch and also from water, thus rendering it absolutely useless to me, I must put in a claim for $100.00 damages. I put in no claim for right of way land or fencing, etc."

[fol. 179] H. M. Shelburne put in a claim for "fencing land one-fourth mile for County Road Petition No. 83," and fixed no price whatever, merely saving "cost of fencing."

Joseph A. Elliott asked: "damages on account of County Road, which angles across" certain property described by him—$30.00.

John Mullin, the originator apparently of this situation, said:

"Your letter was received yesterday as to the road. If the county will build a fence three-quarters of a mile on my side of the road, or pay for the ground at $25.00 per acre, either one will be all right with me."

So far as the claims that were filed are concerned, we think ours is just as specific as any, except that in our case, and in the case of Shelburne, neither specified how many dollars damages were claimed. We think there is only one view this court can take of the situation, assuming that in a proceeding of this kind the court has a right to raise the question, which we seriously doubt, and that is the view [fol. 180] taken by the Supreme Court of Indiana in the case of City of Decatur v. Grand Rapids & I. R. Co., as reported in 45 N. E., at page 793.

It is not necessary to elaborate upon the facts in that case, one of the errors assigned being with reference to the ruling of the court upon a demurrer questioning the sufficiency of the objections filed to the proceedings. Before quoting this excerpt, we wish to call the court's attention to the fact that in Indiana the express provisions of the statutes were that the objections should "state specifically the grounds of" their "objection to the proceedings of the common council and commissioners," while in the case at bar there are no regulatory provisions respecting who shall constitute a sufficient claim for damages or objection.

With reference to the contention in the above case, the court used the following language:

[fol. 181] "As to the first paragraph of answer, it is insisted that under section 3643, Rev. St. 1894 (section 3180, Rev. St. 1881), the appellees were required to 'state specifically the grounds of' their 'objection to the proceedings of the common council and commissioners,' and that as this was a special proceeding, where the ordinary rules of practice do not obtain, a general claim for damages was insufficient. The statute referred to further provides that 'the transcript of the proceedings of the common council and commissioners shall be considered as the complaint; and the written statement, to be filed by the appellant as aforesaid, shall be in the nature of

an answer or demurrer. Issues of law and of fact may be found, tried and determined as in other actions of law.' The latter revision determines very clearly that an answer sufficient to present an issue in other actions at law would be sufficient in proceedings of this character, unless it may be said that, under the former provision, any answer objecting to the damages assessed must be so specific as to point out the particular injuries sustained, and the elements of damages claimed. We do not think that provision of the statute makes such requirement. In the appeal to the circuit court, 'the regularity of the proceedings of the commissioners and the questions as to the amount of benefits or damages assessed may be tried,' and the answer shall 'state specifically the grounds of objection.' Perhaps an answer generally objecting to the condemnation and to the damages assessed would not comply with the statute; but when [fol. 182] it is answered that the appellant is dissatisfied with the damages assessed, and demands an increased amount of damages, it will be sufficient as against a demurrer. Such pleading must be considered in the light of the complaint, the character of the demand, the uses to be made of the property, and the uses to which it is already subjected. When so considered, the general allegation of injury or loss of property and the damage will be sufficient to withstand a demurrer. If a more specific answer is desired, it should be sought by the usual means of a motion to make more specific."

We think the last sentence of the court clearly sustains us in our contention that this is not an appropriate time to raise the question at all, but if the question is to be raised it should be raised by the "usual means of a motion to make more specific."

We likewise call the court's attention to the case of Dallas P. & S. E. R. Co. v. Day, a decision by the Court of Civil Appeal of Texas, reported in 22 S. W., at page 538. A motion was made to require the defendant to particularize in writing the damages claimed by [fol. 183] him before going into the trial, with reference to which the court said:

"The court did not err in refusing to require the defendant Day to particularize in writing the damages claimed by him before going into the trial. The statute does not require written proceedings in this character of proceeding, other than the application filed by the plaintiff as a basis for the condemnation. The law regulates what can and what cannot be considered as items of damages and there is no necessity for any greater particularity."

It seems to us that is the precise situation here. That a writing of some character making a claim for damages is required is obvious, because the claim is made that it should be filed, but beyond such requirement, the statutes are silent.

There is nothing in Section 2529 with reference to the duties of the County Clerk that requires any more of the claims for damages and objections than the sections we have above discussed. Section 2529 requires the County Clerk, when he notifies the appraisers ap-

pointed in writing of their appointment, to specify "the names of all claimants for damages on account of the location of alteration [fol. 184] of the said road, with the amount of damages asked by each claimant." That cannot be construed as relating back to the claim for damages and objections and requiring that such claimant and objector shall specify the amount of his claim. This section relating to the duties of the County Clerk can mean no more than that the County Clerk shall notify the appraisers of whatever claim is made by the claimant. If the claimant specifies an amount, then the clerk must specify the amount. If the claimant does not specify an amount, but merely makes a general claim, then the Clerk must so notify the appraisers; in other words, it is a proviso that the County Clerk shall transmit to the appraisers whatever claim or demand is made by a claimant and nothing more; otherwise, it might be contended that the County Clerk would have a right to refuse to include a claim for damages, merely because the claimany had not specified a particular amount, which we believe this court [fol. 185] will concede would be beyond the powers of the County Clerk.

If, as was stated in the above case, the law fixes the methods of computing damages, which it does in Wyoming no- only by statute but by the court-made law of the State, what difference does it make whether the claimant specifies in detail his methods of computing damages or states generally that he is damaged?

On the whole, we think both of the questions submitted must be resolved in favor of the position taken by the North Laramie Land Company in the case at bar.

While your Honor restricted our brief to the two points, we feel we are justify in carrying our discussion a point further, by addressing a few remarks to the proposition that if the position we take upon the two questions is sound, then this court must hold that the proceed- [fol. 186] ings before the Board of County Commissioners are void in that they constitute taking our property without due process of law. As a matter of fact, unless we misunderstood the court, we got the impression that it would require an adverse ruling upon the two questions submitted, in order to show that the Board of County Commissioners was justified in completely ignoring our claim for damages, because it must be conceded it did ignore our claim. If the claim was a proper claim, and filed at the proper time, we believe there can be no doubt in the court's mind but that the Board of County Commissioners should have passed upon such claim, and that our right to appeal was dependent upon an adverse decision by the Board of County Commissioners upon such claim. But the claim was absolutely ignored; no time or place was fixed for a hearing upon the claim; there never was any hearing of any kind by the appraisers or the Board of County Commissioners, so far as the record discloses, upon the claim made by the North Laramie Land [fol. 187] Company, and there is no judgment or order in the

records of the Board of County Commissioners showing that our claim was allowed or disallowed.

It is not sufficient to say, as we believe your Honor was convinced upon oral argument, that our claim is impliedly disallowed by an order confiscating the property of the North Laramie Land Company. We have no right under the statute to appeal from an order taking the property of the North Laramie Land Company. That is a matter that is left with the Board of County Commissioners, and if they, in the first instance, acquired jurisdiction and followed the specific directions of the statutes in such cases made and provided, then we must give up our land, we being given only the right to have a rehearing de novo in the District Court of the State upon the question of damages, by appeal from the finding of the Board of County Commissioners that we are not entitled to damages. Therefore, we earnestly contend that the temporary restraining order should be made permanent.

[fol. 188] From the foregoing it must not be understood that we have lost faith in our contentions with respect to the constitutionality of the Public Road Act of Wyoming, and with respect to the jurisdiction of the Board of County Commissioners, because of the defective petition.

We again reassert all that we have said in that regard, but have confined our discussion because of the court's request that we enlighten him further upon the two questions expressly submitted for discussion.

All of which is respectfully submitted,

Kline and Natwick, Pam and Hurd, Attys. for Pltf.

[fol. 189] In the District Court of Platte County

[Title omitted]

Motion for New Trial—Filed June 8, 1918

Comes now the plaintiff in the above entitled cause and respectfully moves that the order heretofore entered by the court *court* on the 9th day of May A. D. 1918, in the following words and figures, towit:

"Therefore, it is now ordered, adjudged and decreed, that plaintiff be denied a perpetual injunction against defendants or any of them; that the order of temporary injunction heretofore granted by C. D. McDougall, Court Commissioner, against defendants, on the 10th day of December, 1917, be vacated and dissolved; and that defendants recover of plaintiff their costs, and that plaintiff be given an exception."

[fol. 190] be vacated and a new trial granted to the plaintiff for the following causes affecting materially the substantial rights of said plaintiff, that is to say:

1. That the said court erred in admitting improper evidence offered by the defendants, and each of them.

2. That the said court erred in refusing to admit proper evidence offered by the plaintiff.

3. That the said court erred in denying the plaintiff a perpetual injunction against the defendants, and each of them as prayed by said plaintiff in its said petition.

4. That the said court erred in vacating and dissolving the order of temporary injunction heretofore granted by C. D. McDougall, Court Commissioner, against the defendants, and each of them, on the 10th day of December, A. D. 1917.

5. That the said court erred in holding that the defendants, and each of them, had power to so locate said road.

[fol. 191] 6. That said court erred in holding that the proceedings of the defendants, and each of them, in locating said road did not contravene Sections 6, 7 and 33 of Article I of the Constitution of the State of Wyoming and the Fourteenth Amendment of the Constitution of the United States of America.

7. That the said court erred in holding that the acts of the defendants, and each of them, did not constitute taking plaintiff's property without just compensation and without due process of law.

8. That the said court erred in holding that the defendants, and each of them, had jurisdiction of the defendant's property.

9. That the decision of the court was not sustained by sufficient evidence.

10. That the decision of the court was contrary to law.

11. That the court committed error of law upon the trial and that the same was excepted to by the plaintiff.

Pam and Hurd and Kline and Natwick, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 192] IN THE DISTRICT COURT OF PLATTE COUNTY

[Title omitted]

ORDER OVERRULING MOTION FOR A NEW TRIAL

The above matter coming on this day regularly to be heard upon the motion for a new trial filed herein by the plaintiff, North Laramie Land Company, said plaintiff having been unavoidably prevented from filing the same within ten days after the Court's decision was rendered in said action, and the Court having duly considered said

motion and now being fully adviced in the premises, doth overrule *siad* motion, to which order of the Court in overruling said motion for a new trial, said plaintiff now and here excepts.

And thereupon on motion of said plaintiff, said plaintiff is given until and including the 14th day of August, A. D. 1918, in which to prepare and file in this Court its Bill of Exceptions in said action.

Dated the 15th day of June, A. D. 1918.

William C. Mentzer, Judge.

[fol. 193] Clerk's certificate to foregoing paper omitted in printing.

[fol. 194] IN DISTRICT COURT OF PLATTE COUNTY

[Title omitted]

TRANSCRIPT OF EVIDENCE

Transcript of evidence taken on the trial of the above-entitled case, held at Wheatland, Platt County, Wyoming, on the 5th day of February, A. D., 1918, before Hon. William C. Mentzer, sole judge of the above-entitled court, without the intervention of a jury.

Burrell J. Cramer, Esq., appeared on behalf of the Plaintiff, and C. A. Paige, Esq., County and Prosecuting Attorney of Platt County, Wyoming, and Avery Haggard, Esq., appeared on behalf of the Defendants.

[fol. 195] Be it remembered that the above entitled cause came on regularly for trial in the District Court of Platte County, Wyoming, on the fifth day of February, A. D. 1918, before the Honorable William C. Mentzer, sole judge of said court, without the intervention of a jury, the plaintiff being represented by its attorneys, Kline & Natwick and Burrell F. Cramer, and the defendants by C. A. Paige, County and Prosecuting Attorney of Platt County, Wyoming, and Avery Haggard, and thereupon the plaintiff, in order to maintain the issues in its behalf, introduced the following evidence, to-wit:

[fol. 196] It is admitted by the Defendant that the Plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Wyoming.

By Mr. Cramer: I now offer in evidence as Plaintiff's Exhibit "A" a transcript of the records of the Board of County Commissioners of Platte County, Wyoming.

The transcript of the record referred to above was then marked by the reporter "Plaintiff's Exhibit A", and is hereto attached and made a part hereof.

By Mr. Cramer: I now ask counsel to stipulate of record that the Board of County Commissioners of Platte County, Wyoming, unless restrained by this court, will proceed to put the road through as described in the proceedings of the Board of County Commissioners of Platte County.

By Mr. Paige: That is true.

By the Court: It may be so stipulated in the record.

By Mr. Cramer: The Plaintiff rests.

[fol. 197] T. A. SHAW, produced as a witness on behalf of the defendant, was duly sworn to testify the truth, the whole truth, and nothing but the truth, and testified as follows:

Direct examination by Mr. Haggard:

Q. State your name.

A. T. A. Shaw.

Q. Where do you reside?

A. In the northwest end of this County.

Q. How long have you resided there?

A. About 40 years.

Q. I will hand you this instrument purporting to be a petition for the establishment of a highway and a waiver of any claims for damages, and an agreement conveying said road on behalf of the signers thereof, which purports to have been filed on April 4, 1917; I ask you if you have ever seen that instrument before?

By Mr. Cramer: I object. If it is merely a question of identifying the signatures, we don't in any of the pleadings raise the question of the identity of the persons whose names may be on that document or any other. The second objection is that the Board of County Commissioners, acting in proceedings of this character, act as a court of limited jurisdiction and can only speak by their record, and they cannot correct defects in the record by parole testimony.

By Mr. Haggard: This is not an effort to correct any defects; it is merely an effort to explain the record so that the court may pass upon the condition of that record; nor is it clear that the two documents are to be considered as one. The defendants claim they [fol. 198] are one document, and it is the purpose of this testimony to show that the signatures as they appear on there were signatures to the entire document consisting of two pages.

By the Court: I will hear this testimony, and will hear the entire argument at the conclusion as to the admissability of the testimony, and, if it is so stipulated, this testimony on this point may all be considered as having been objected to, and the testimony is received subject to the objection, and the court will reserve its right to rule on the objection hereafter.

A. Yes sir, I recognize this as a petition I circulated.

Q. At the time you first saw that petition were these signatures upon it?
A. No sir.
Q. Do you know who circulated this petition?
A. Yes sir.

By Mr. Cramer: I will have to object to that as hearsay testimony.
By the Court: He may state, if he knows.

Q. Who did?
A. I did.
Q. At the time you circulated this petition were these two papers fastened together in the same condition they are now?
A. Yes sir.
Q. What, if any, statement did you make to these persons whose signatures you procured to that instrument, as to its character, when you solicited their subscription?

[fol. 199] By Mr. Cramer: That is objectod to, as we are not bound by any conversation he may have had.
By the Court: It may be received subject to the objection.

A. If I understand the question, I presented this to the people and asked them if they were willing to sign this in regard to opening up a road in this part of the County, and they all said they was willing to have this road opened up.
Q. And in response to that request of yours they did so sign the paper?
A. Yes sir.

By Mr. Cramer: I am not waiving my right to make these objections, if I cross-examine.

Cross-examination by Mr. Cramer:

Q. To the petition which has been handed you there is attached a typewritten document with various pencil and one pen signatures; who prepared that document?
A. Weel, sir, I couldn't answer that question. It was prepared in the County Commissioners' Office, I suppose, by the County Clerk.
Q. How did the matter come to your attention?
A. I don't know as I understand you?
Q. You circulated this, you say?
A. Yes sir.
Q. Who gave it to you to circulate?
A. Mr. Hoffman.
Q. Then you took the documents to the different people who you say signed their names here?
A. Yes sir.
[fol. 200] Q. Your name is Shaw?
A. Yes sir.
Q. Where do you live?
A. Out here about 35 miles.

Q. How near the road?
A. Which road?
Q. We are only talking about one road—the proposed road.
A. I live about 15 miles from where this road intersects the road I travel.
Q. How did Mr. Hoffman happen to give this to you?
A. He wanted me to circulate it so as to get the names of the people on it to show whether they wanted the road or not.
Q. Isn't there anybody who lives closer, and is more interested in the road, than you?
A. Nobody is much more interested in the road than I am, but there is people lives right on this road.
Q. Why didn't you sign this?
A. I did sign it, if I am not mistaken.
Q. If you signed this, will you please point out your name.
A. I will take that part of it back. I will tell you why——

By Mr. Cramer: I object to that as immaterial as to why he didn't sign it. It purports on its face to be signed by a sufficient number of electors.
By the Court: He may answer.

A. (continued). This road connects with the road I travel as a County road, and it has been for a good many years, and this road we are trying to get opened now we have been trying to get opened for about eight or ten years. Probably I didn't sign the petition, but [fol. 201] I am interested in the road just the same. I don't know as it was necessary for me to sign the petition because I had my part of the road I traveled to where it intersects this road.
Q. Where does D. F. Romine live?
A. North of here about five miles.
Q. Are these various persons who signed this here now?
A. Part of them are.
Q. Part of them are?
A. I don't know that all of them are.
Q. I notice there is only one man, John Mullin, signed the printed copy of the petition; how did that happen?
A. If I can understand this right, Mr. Mullin signed the petition with the calculation or expectation of getting a little damages. He might have thought he was signing the petition the same as the rest of them.
Q. Wasn't it presented to John Mullin?
A. Yes sir.
Q. You notice he is the only man who signed the second paper in your hand?
A. Yes sir.
Q. Why is that?
A. As I say, he signed that paper, with my understanding that he expected to get a little damage out of this.
Q. That is what he said when you talked to him?
A. Yes sir.
Q. What did he say?

A. I don't know whether I remember the conversation exactly, but he signed this petition the same as the rest of them, but maybe he didn't sign with the rest of them, but he signed with the calculation of having this road got through.

Q. I understand that was the purpose. I notice that the second [fol. 202] petition, the printed petition, has a number of lines for signatures, and the first document doesn't have any blank lines for signatures. You know that in the ordinary course of events, where a document is to be signed and is considered to be a whole document, that they always sign on the last page, and John Mullin is the only one who signed on the last page, and every other man signed on the first page; why is that?

A. I don't know as I can explain that.

Q. You are the man who took it around; didn't you talk with them about it?

A. Yes sir.

Q. What did they say and what did you say?

A. I will repeat all the conversation I remember. I went to Mr. Mullin with this petition ans said: "Mullin, I have another petition for this road to go through" and he said: "All right. Do you think you can get it through this time?" and I said: "I think we have County Commissioners now who will be able to put it through." If there was any more conversation, I can't remember.

Q. Do you know anything you said to the other people except Mullin?

A. Yes sir.

Q. What did you say?

A. I said I had a petition, and asked them if they wanted to sign it, to open a road, and I explained the road, and they said "Yes, we want the road opened up and are willing to have it opened up." Whether there was any more conversation between me and them I don't know.

Q. When did you see the different parties?

A. I can't remember the time exactly.

Q. When did you receive this document?

A. Sometime in September, I think; I wouldn't say what time be- [fol. 203] cause I don't remember.

Q. Was it in the fall?

A. If it was in September, it must have been in the fall.

Q. But you didn't remember whether it was in September.

A. I don't remember whether it was September or October.

Q. At any rate it was in the fall?

A. Yes, sometime.

Q. Over what period of time did you work in getting these signatures?

A. It wasn't over two days.

Q. It wasn't filed until April.

A. Perhaps not.

Q. It shows on its face that it wasn't filed until April, doesn't it?

A. Yes.

Q. Who filed it?

A. I couldn't tell you. I brought it back and turned it over to the Commissioners.

Q. When?

A. I don't remember.

Q. Who did you turn it over to?

A. I don't know that either. I took it to the County Commissioners' office and turned it over to the County Commissioners or the County Clerk.

Q. Who have you talked with before you came here?

A. I might have talked with a lot of people.

Q. Have you talked with any lawyers?

A. No sir.

Q. You were put on the stand without a single conversation about what you were going to say?

A. No sir.

[fol. 204] Q. You mean that you didn't have any talk with Mr. Paige or Mr. Haggard?

A. I didn't understand your question.

Q. Are you going to take that back?

A. Yes sir. I thought you meant who did I talk with before I put this petition in the office.

Q. No, I mean before you came here to testify, what lawyers did you talk with?

A. Those two gentlemen right here. (Indicating Mr. Paige and Mr. Haggard.)

Q. What did you say and what did they say?

By Mr. Haggard: I object to that.

By the Court: Sustained.

Q. These different men, from time to time when you showed this document to them; did they read the whole thing?

A. They were supposed to and I think they did. They looked it over and I guess they read it.

Q. You don't know?

A. No, I couldn't tell whether they read it or not.

Q. You didn't stand there and watch them?

A. I did.

Q. At least, they used their eyes and went through the motions?

A. They seemed to be reading it, but maybe they were like I am and can't read.

Q. Can't you read at all?

A. Sometimes when I have got my glasses.

Q. It is a question of eye-sight then?

A. Yes sir, I can read. These people took the paper and read it over, I am satisfied.

[fol. 205] Q. One was a petition for a road and the other was a waiver of damages?

By Mr. Haggard: Objected to as calling for a conclusion as to whether they were two separate instruments or one.

Q. There were two pages and one was a printed form of petition for a road and the other was a specially prepared page waiving damages and donating the road; now each time each one of those men read that document, those men who signed, were they owners of the land along the road, or were they men who could claim damages?

A. Do you mean deeded land, or just filed on?

Q. I don't care whether they can claim on deeded land or Carey Act, they could claim damages.

A. I am not well enough posted to know.

Q. But you knew that you couldn't claim damages, didn't you?

A. I didn't try.

Q. I didn't ask you whether you tried; please answer the question. You knew that you couldn't claim damages? You knew that you owned no land along the road and couldn't put in a claim for damages because of damages to your land, didn't you?

A. On this certain petition?

Q. Yes.

A. I am not owning any land on this petition.

Q. But you could have signed the petition?

A. I suppose I could.

Q. But you didn't?

A. I didn't.

Q. And these other people, instead of signing the second page, signed on the first page which relates only to waiver of damages and [fol. 206] donation of land?

A. As near as I can see.

Q. You see it, don't you?

A. I think the paper——

Q. No thinking, you must answer my question. (Former question repeated by the reporter as follows:)

And these people, instead of signing the second page, signed on the first page which relates only to waiver of damages and the donation of land?

That is a fact now, isn't it?

A. Yes sir it appears that way the way it was signed.

Q. Have you been told that that is the turning point in this case as to whether those two documents can be considered together as a petition?

By Mr. Haggard: I object to that question.

By the Court: He may answer.

A. I am not going to answer that question unless I understand it.

Q. (Question repeated.)

A. Yes sir.

Redirect examination by Mr. Haggard:

Q. You offered to explain the appearance of those signatures on the first page instead of the last; can you explain how that occurred.

A. Yes sir.

Q. Please explain.

A. When this petition was given to me by the County Commissioners he says: "There is a petition and waiver together." If I [fol. 207] remember right, he said: "When they sign this waiver, that means that people expecting damages to sign the petition that they want the road without damages." I don't think part of these people understood the difference and probably signed this petition expecting to sign the petition and not the waiver.

By Mr. Cramer: That is not within the general objection. I object to that as involving a concousion as to what probably went through the mind of someone else.

By the Court: Sustained.

By Mr. Cramer: I move to strike it out.

By the Court: Sustained.

Recross-examination by Mr. Cramer:

Q. After Mr. Hoffman had told you about the difference between the two documents, do you mean to say that you presented it to the various farmers and didn't tell them what Mr. Hoffman said?

A. I did.

Q. You told them?

A. Yes sir, but as I said before they didn't understand it.

By Mr. Cramer: I object to that and move to strike it out, what they understood.

By the Court: Sustained.

At this time the taking of testimony was adjourned until two o'clock P. M., at which time the court reconvened and Mr. Shaw was recalled for further direct examination by Mr. Haggard.

[fol. 208] T. A. Shaw, recalled as a witness on behalf of the defendants, was duly cautioned that he was still under oath, and testified as follows:

Direct examination by Mr. Haggard:

Q. I call your attention again to this petition with reference to which you testified this morning, and which has been marked for identification No. 1; you stated you circulated the petition and procured the signatures; did you procure them all?

A. No sir.

Q. Do you know who procured the others?

A. My son.

Q. Do you know which ones you procured.

A. Yes, I think I go about seven or eight signatures.

Q. At least seven?

A. I think so.

By Mr. Cramer: I desire to make a motion to strike out the testimony of the witness on the general ground as stated.
By the Court: The same ruling. Ruling will be reserved.

[fol. 209] JAMES A. SHAW, produced as a witness on behalf of the defendants, was duly sworn to testify the truth, the whole truth, and nothing but the truth and testified as follows:

Direct examination by Mr. Haggard:

Q. I hand you a paper marked No. 1 for identification; do you recognize that?
A. Yes sir.

By Mr. Cramer: The same objection.
By the Court: The same ruling.

Q. Did you procure any signatures to that instrument?
A. Four, I think.
Q. Indicate which four.
A. Hall, Cook, Hood and Spaeth.
Q. At the time you procured the signatures of those gentlemen, did you make a statement to them as to the character of this petition, what it was?

By Mr. Cramer: I object to any conversations made in the absence of the Plaintiff here, and in the second place the question itself involves a conclusion in the answer.
By the Court: He may answer.

A. I merely said: "Do you want to sign the petition for this new road?"
Q. What, if any, replies did they make to that?
A. They said they were willing.
Q. What, if anything did they do?
[fol. 210] A. They signed it.

Cross-examination by Mr. Cramer:

Q. In what condition did you find this document at the time it was delivered to you?
A. I found it in an envelope.
Q. Whose names were on there?
A. I can't tell you for sure.
Q. Who gave it to you?
A. My father.
Q. Was John Mullin's name on it?
A. Yes, it was.
Q. Was it signed on one or both; you see how his name is signed to both; was it signed then to one or both?
A. I don't remember.

Q. When was it this document was given to you, and you procured the signatures you say you procured; in point of time, when was it?

A. In the spring, the latter part of the winter and early in the spring.

Q. What year?

A. I don't know.

Q. You don't know that?

A. No sir, I don't.

Q. Do you remember what conversation you had with Cook and those other gentlemen?

A. I only asked them if they wanted to sign a petition for the new road. They all knew where it was and I had no occasion to explain where it was, and they all said they would and they took it and signed it.

[fol. 211] Q. That is your conclusion that they didn't have occasion to ask what it was, that they all knew?

A. They didn't ask me any questions.

Q. Did they ask you where to sign?

A. No, they didn't.

Q. Here are two documents and one says "Name" and "Post office" and here is John Mullin's name signed on the second page of the document, and they didn't ask you what they were signing or a thing, but all signed in the same place?

A. It looks like it.

Q. Didn't they?

A. Yes, they did, I guess.

Q. Don't you know?

A. Yes.

Q. There is no doubt about it in your mind?

A. None whatever.

Q. How much time did you spend with Mr. Cook at the time you obtained his signature?

A. It was in his barber shop and it was about 15 minutes.

Q. Where in his barber shop?

A. At Dwyer.

Q. How long has he lived at Dwyer?

A. I don't know.

Q. Did you know him before that?

A. I met him the first time that day.

Q. As to whether it was Mr. Cook then you don't know?

A. I do not.

Q. You merely walked into his barber shop then and did not have any conversation, but he merely signed the petition and you walked out; that is all you did?

A. These four were all there.

[fol. 212] Q. This was the result of a pre-arrangement, was it?

A. No.

Q. You accidently found them there?

A. Yes sir, I went to Dwyer for that purpose.

Q. How many of them own real estate?

A. They all have homesteads.

Q. Mr. Cook included?
A. Yes sir.
Q. How long a time were you in this barber shop?
A. Possibly 15 or 20 minutes.
Q. And all you said was "Here is a petition, sign it," and that is all that was said?
A. I said: "Here is a petition for a new road; do you fellows want to sign it," and they took it.
Q. It took 15 minutes to say that and to sign four names?
A. Yes sir.
Q. You didn't tell them about any instructions that Mr. Hoffman had given your father?
A. No sir, I didn't know any.
Q. Your father hadn't conveyed that to you; did you hear his testimony about what Mr. Hoffman said?
A. Yes sir.
Q. He didn't tell you that when he gave this petition to you?
A. I simply knew it was a petition for a road and it didn't interest me very much, and he just wanted me to take it up there.
Q. Did he tell you where to go?
A. He said "Go to Dwyer and see if you can get those signers."
Q. Did he tell you any particular persons?
A. No sir, he left it to me.
Q. And you walked into the barber shop and found four men there?
A. I found a number there, but four had a right to sign it.

[fol. 213] By Mr. Cramer: I make the same motion to strike this testimony out of the record.
By the Court: The same ruling

CHESTER THOMPSON, produced as a witness on behalf of the defendants, was duly sworn to testify the truth, the whole truth, and nothing but the truth and testified as follows:

Direct examination by Mr. Haggard:

Q. I hand you an instrument marked No. 1 for identification; do you recognize that instrument?

By Mr. Cramer: The same objection.
By the Court: The same ruling.

A. Yes sir.
Q. This is your signature?
A. It is.
Q. In your hand-writing?
A. Yes sir.
Q. Do you know who presented that paper to you for signature?
A. Yes sir.

Q. Who?
A. J. A. Shaw.
Q. That is the old gentleman or the son?
A. They were both there?
Q. What statement did they make to you as to the character of this instrument?
A. We had talked of this road coming through and he said he had [fol. 214] a petition and I looked it over and said I was ready to sign it.
Q. What was your understanding at the time you signed it as to what the instrument was you were signing?

By Mr. Cramer: I object to what his understanding was.
By the Court: Sustained.

Q. What instrument did you think you were signing?
A. A petition.
Q. For what?
A. For a road.

Cross-examination by Mr. Cramer:

Q. When was this presented to you, Mr. Thompson?
A. In February or March.
Q. What year?
A. 1917.
Q. Where do you live?
A. I live about 12 miles north of here.
Q. How near the road?
A. Right on the road.
Q. The proposed road?
A. Yes sir.
Q. What is your business?
A. I am on a homestead farming.
Q. Where did you vote last?
A. In Missouri.
Q. You haven't voted since that time, have you?
A. No sir.
Q. Did you register since that time?
[fol. 215] A. I wasn't here long enough to register.
Q. That was true at the time you signed this?
A. No. I have been here long enough to sign that petition.
Q. No, I mean you hadn't registered so as to qualify you to vote at the time you signed this?
A. No sir.

FRANK N. HALL, produced as a witness on behalf of the defendants, was duly sworn to testify the truth, the whole truth, and nothing but the truth and testified as follows:

Direct examination by Mr. Haggard:

Q. I call your attention to this instrument marked No. 1 for identification; is that your signature on that?

By Mr. Cramer: The same objection.
By the Court: The same ruling.

A. Yes sir.
Q. Who presented that to you?
A. James Shaw.
Q. The young man?
A. Yes sir.
Q. What statement did he make to you at the time as to what the character of the instrument was?
A. He said it was a new road and described it to me.
Q. What did he say this instrument was?
A. A petition.
Q. What did you understand to be the character of this instru-[fol. 216] ment at the time you signed it?
A. A petition for a new road.

By Mr. Cramer: With reference to the testimony of Mr. Thompson I reserve the motion to strike the testimony.

Cross-examination by Mr. Cramer:

Q. When this petition was presented to you by Mr. Shaw where were you?
A. If I remember right, I was in my store.
Q. Where is that?
A. Next to the barber shop. I might have been in the barber shop; I won't say for sure.
Q. How long a time were you and Mr. Shaw together discussing this matter?
A. I couldn't say; perhaps 15 or 20 minutes.
Q. What was the conversation?
A. We talked the road over, where it was to run to Wheatland, and then I signed it.
Q. Did you read the document?
A. Yes sir.
Q. Who had signed it before you, if anyone?
A. There had been several signers, I don't remember at the time, people who lived along the road.
Q. Do you know it to be a fact that they were people living along the road?
A. Yes sir.
Q. Were you acquainted with all of them?
A. Yes sir.

Q. Do you know whether or not John Mullin's signature was [fol. 217] attached to that or not?

A. I don't know.

Q. Now, of course, I have no hesitancy in telling you that this is imporant; were the two documents together at the time they were presented to you?

A. I don't remember, but I think they were.

Q. If you were swearing to it as a fact, you wouldn't want to say under oath that the two documents were together?

A. No, I wouldn't want to swear to it, but I think they were.

Q. Let's kind of reason this out. You are a business man; what is your business?

A. Store keeper.

Q. And part of your business consists in giving orders, signing statements and bills and things of that character?

A. Yes sir.

Q. So that it is not a new thing for you to execute a document of one or two pages?

A. No sir.

Q. And contracts and things of that character—you know and I know in the ordinary run of affairs, the signatures are always appended at the end, or on the last page of the document, aren't they?

A. Not always, I don't think.

Q. It is so much so that you could state it as a general rule?

A. As a general rule, yes.

Q. Now just take this, in the ordinary course of events, you notice that this second page bears the signature of John Mullin, Wheatland Post Office, and there are a long list of lines for ten persons to sign, and on the first page there are absolutely no lines there for signatures, except that there happens to be a blank space; don't you think, if the documents had been presented to you fastened [fol. 218] together, that you would have signed on the last page where John Mullin's name appears?

A. I am not certain. If the other signatures were on there, I might have put it down there.

Q. As a prudent and experienced business man, you would be inclined to sign that portion of the document that you wanted to be bound by?

A. Sure.

Q. You notice that the first page relates to a waiver of claim for damages and donates certain right-of-way, and is not a petition, if considered by itself.

A. I signed it as a petition.

Q. I didn't ask you that. When you signed that, did you intend to waive your claim for damages and donate the right-of-way?

A. I signed it as a petition.

Q. What did you intend to do, sign the first page?

A. I intended to sign it so it would go before the County Commissioners. I didn't want any damages. I didn't sign it as a waiver, but I di-n't care.

Q. Was the question discussed whether it was or was not a waiver?

A. I didn't care.

Q. Did the thought come to your mind at that time whether it was or was not?

A. I didn't care so it didn't come to my mind.

Q. How old are you?

A. 27.

Q. When did you vote last?

A. At the last election.

Q. What are the facts; at the time you signed this were you a registered, qualified voter?

A. I had been here long enough to vote, five years, and I was [fol. 219] registered.

Q. Did you notice, Mr. Hall, at the time this document was presented to you that there were two holes as if the original fasteners had been removed and new fasteners replaced?

A. I di-n't notice that.

By Mr. Cramer: I make the same motion with reference to Mr. Hall's testimony, to strike it out.

By the Court: The same ruling.

By Mr. Haggard: I desire to introduce this paper in evidence for the purpose of calling the attention of the court to the nature of the instrument. The transcript does not really show that these two papers were filed together and I desire the original evidence for that purpose.

By Mr. Cramer: I have no objection to the paper, but I don't want any limitations, for the plaintiffs want it introduced for all purposes.

The paper was then marked by the reporter "Defendants' Exhibit No. 1," and is hereto attached and made a part hereof.

By Mr. Haggard: The defendants rest.

[fol. 220] D. F. Romine, produced as a witness on behalf of the plaintiff in rebuttal, was duly sworn to testify the truth, the whole truth, and nothing but the truth and testified as follows:

Direct examination by Mr. Cramer:

Q. State your name.

A. D. F. Romine.

Q. Where do you live?

A. Six miles northeast.

Q. What is your business?

A. Farmer.

Q. I hand you herewith a document marked No. 1, on the first page of which appears a pencil signature "D. F. Romine"; is that your signature?

A. Yes sir, that is my name.
Q. Did you write it there?
A. No sir.
Q. On the date of March 21, 1917, or during that year, were you a qualified voter of Platte County, Wyoming?
A. No sir, I guess not.
Q. You had not registered?
A. No sir.
Q. You had not lived in the State long enough?
A. No sir.
Q. When did you come to the State?
A. I think along in April sometime, 1916, I think it is.

Cross-examination by Mr. Haggard:

[fol. 221] Q. Have you filed on a homestead in this County?
A. No sir; I own some land down here.
Q. You authorized the signing of your name to this petition, did you?
A. Yes sir.

By Mr. Cramer: To which I object.
By the Court: He may state the facts.
By Mr. Cramer: Let him state what he did or said.

A. (continued). There were three of us—two cousins and myself—in on the place, and I told either of them, when the petition was presented, to sign it for the road, as we wanted the road.

Redirect examination by Mr. Cramer:

Q. That authorization, so-called, was not in writing?
A. No sir.
Q. You just told him by word of mouth?
A. Yes. I just told him by word of mouth to sign the petition, as we all wanted the road.

[fol. 222] Miss Bessie Fitz, produced as a witness on behalf of the plaintiff in rebuttal, was duly sworn to testify the truth, the whole truth, and nothing but the truth and testified as follows:

Direct examination by Mr. Cramer:

Q. State your name?
A. Bessie Fitz.
Q. Where do you live?
A. Wheatland, Wyoming.
Q. What is your business?
A. County Clerk.
Q. As County Clerk, do you have control and charge of the books showing the registration of those who undertake to qualify to vote?
A. I do.

Q. Have you the registration books showing those who have registered for the year 1916.

A. I have.

Q. Was 1916 the last registration?

A. It was.

Q. Now will you ascertain if J. C. Spaeth is registered as a voter; What do your records show?

By Mr. Haggard: Objected to as immaterial and irrelevant.

The Statute provides that the petition shall be signed by electors, not qualified electors, and the fact that he is not registered there does not determine whether or not he is an elector.

By the Court: The Constitution provides who is a qualified elector [fol. 223] in residing in the County and State a certain length of time. I will permit the witness to answer, but I don't want to take up a great deal of time.

A. I do not find him registered.

By Mr. Cramer: The Plaintiff rests.

[fols. 224-252] In District Court of Platte County

Reporter's Certificate

I, T. Paul Wilcox, Official Court Reporter of the First Judicial District of the State of Wyoming, do hereby certify that I reported in short-hand all of the testimony offered and given on the trial of the case wherein the North Laramie Land Company was Plaintiff, and the Board of County Commissioners of Platte County, Wyoming, was defendant, and that the above and foregoing is a full and true, correct and complete typewritten transcript of my short-hand notes, together with all objections, rulings of the court and exceptions, and all exhibits offered in evidence.

In witness whereof I have hereunto set my hand this 10th day of July 1918.

T. Paul Wilcox, Official Court Reporter, First Judicial District.

[fols. 253 & 254] Defendants' Ex. No. 1 in Evidence—Omitted; printed side page 46 ante

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[fol. 255] And the above and foregoing was all the evidence introduced or given in said cause and action, including all of the exhibits introduced in evidence and referred to in the testimony of the witnesses.

Be it further remembered that at the close of the evidence said plaintiff renewed its objections to the testimony offered by the defendants on their behalf and motions to strike out said testimony, the rulings upon which were by stipulation of the parties during the testimony of said evidence reserved by the Court until the conclusion of the argument of the case to the Court.

Whereupon, the Court overruled each and every of the several objections made by said plaintiff to the admissibility of said testimony, to which ruling of the Court the plaintiff then and there duly excepted.

And be it further remembered that at the close of the evidence, said cause was argued to the Court by the attorneys for plaintiff and defendants, but that the Court thereafter announced that it would reserve its decision until after said parties had submitted briefs upon the different propositions contained in their respective arguments. Whereupon, the further hearing of said cause was continued until the ninth day of May, A. D. 1918.

[fol. 256] ABSTRACT OF FINDINGS OF COURT

Be it further remembered that thereafter on, to-wit, the 9th day of May, A. D. 1918, said cause came on regularly for hearing. Whereupon, after some argument by the counsel for the respective parties, the Court did announce its decision, and ruled:

(1) That the Public Road Act under which said defendants were proceedings was valid and legal and not in violation of any provisions of the State or Federal Constitutions.

(2) That the defendants, as such Board of County Commissioners had jurisdiction of the subject matter of the proposed road through the land of the North Laramie Land Company.

(3) That the petition on which the proceedings before said defendants as such Board of County Commissioners, were based was in compliance with the statutes in such cases made and provided, and was signed by a sufficient number of electors as required by the statutes in such cases made and provided.

(4) That the plaintiff, North Laramie Land Company had failed to file its objections and claims for damages before the defendants acting as such Board of County Commissioners in the proceedings then pending, in the time fixed by the notice published as of May 8th, 1917, in that the defendants, acting as the Board of County [fol. 257] Commissioners, having once fixed the time for the filing of such objections as of noon on the 7th day of June, 1917, even if said board had authority to extend the time for the filing of such objections and claims for damages beyond said June 7, 1917, the Chairman of such board had no such authority and therefore, altho the plaintiff, in reliance upon said extension of time by said Chair-

man of the Board of County Commissioners, did not file its objections and claims for damages before Noon on the 7th day of June, 1917, and altho it did file same within the time fixed by said Chairman of the Board of County Commissioners in his order of extension, it had lost its rights to file such objections or claims for damages, and, therefore, was not entitled to be heard by said defendants acting as said board of county commissioners upon the objections and claims for damages so filed by it, and, therefore, said plaintiff is not entitled to any relief herein. That the claim as filed was not for any definite amount of damages and not in other ways in compliance with the laws of the State of Wyoming, and was not in such form that said board could legally allow same, in that it did not state the amount of damages claimed.

5. That the acts and proceedings of said defendants as such board of county commissioners did not constitute taking the plaintiff's property without due process of law, and that the acts of said defendants as such board of county commissioners did not constitute depriving the plaintiff of its property without just compensation.

6. That the land of the plaintiff, the North Laramie Land Company, through which said defendants, acting as Board of County Commissioners of Platte County, Wyoming proposed running said road, had substantial value.

And the Court further found that the plaintiff be denied a perpetual injunction against the defendants, or any of them, and that [fols. 258-261] the order of temporary injunction granted by C. D. McDougall, Court Commissioner, against defendants on the 10th day of December, 1917, be vacated and dissolved and directed that a judgment should be drawn up in accordance with its said decision, to which rulings, findings and decision of the Court, the plaintiff, the North Laramie Land Company, then and there duly excepted.

Be it further remembered that thereafter, to-wit, on the ninth day of May, A. D. 1918, the plaintiff and defendants entered into a certain stipulation, in the words and figures following, to-wit:

IN THE DISTRICT COURT OF PLATTE COUNTY

[Title omitted]

STIPULATION AND ORDER EXTENDING TIME—Omitted; printed side page 155 ante

[fol. 262 & 263] IN THE DISTRICT COURT, FIRST JUDICIAL DISTRICT

[Title omitted]

FINDINGS AND DECREE—Omitted; printed side page 159A ante

[fol. 264] That the plaintiff, North Laramie Land Company, duly excepted to said judgment, and each and every part of said judgment, at the time said judgment was rendered.

Be it further remembered that thereafter on, to-wit, the 8th day of June, A. D. 1918, and within the time fixed by the Court for the filing of said motion for a new trial, the plaintiff, by its attorneys, Kline & Natwick and Burrell J. Cramer, moved the Court to grant said plaintiff a new trial in said action, which said motion for a new trial was in words and figures as follows, to-wit:

[fols. 265-267] [Title omitted]

MOTION FOR NEW TRIAL—Omitted; printed side page 189 ante

[fol. 268] Be it further remembered that on the 15th day of June, A. D. 1918, said motion for a new trial filed in this Court came on regularly to be heard. Said motion was overruled by the Court. That the order of the Court overruling said motion for a new trial is in words and figures as follows, to-wit:

[fols. 269 & 270] IN THE DISTRICT COURT, FIRST JUDICIAL DISTRICT

[Title omitted]

ORDER OVERRULING MOTION FOR NEW TRIAL—Omitted; printed side page 192 ante

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[fol. 271] That the plaintiff, North Laramie Land Company, by its attorneys, then and there duly excepted to said order of the Court in overruling said motion for a new trial.

Be it further remembered that thereafter, and within the time allowed it by the Court for so doing, plaintiff presented to the Honorable W... C. Mentzer, the Judge who presided at the trial of said action, its Bill of Exceptions for allowance.

[fol. 272] IN THE DISTRICT COURT, FIRST JUDICIAL DISTRICT

[Title omitted]

CERTIFICATE TO BILL OF EXCEPTIONS

The said plaintiff, North Laramie Land Company, by its attorneys and counsel, heretofore, and on the — day of August, A. D. 1918, the same being one of the regular days of the February, A. D. 1918, Term of the District Court of the First Judicial District, sitting within and for the County of Platte, in the State of Wyoming, and within the time fixed and limited by the law, and

by the orders of this Court heretofore made, giving and allowing to said plaintiff, North Laramie Land Company time until and including the 14th day of August, A. D. 1918, within which time to reduce its exceptions and bill of exceptions in the above entitled cause and action in writing and to present the same to Court for [fol. 273] allowance in the presence of the Court and of the judge who tried said action, the above and foregoing, its exceptions and bill of exceptions, in this said cause for signing, sealing, allowance and settlement.

And the Court does find that said bill of exceptions contains all the evidence taken and given upon the trial of said action, and that the exceptions were each and all duly taken at the times stated in said bill of exceptions and that said bill of exceptions is true and correct in all respects.

It is therefore ordered and adjudged that said bill of exceptions be allowed, signed, sealed and settled, and filed herein and made a part of the record in this action, but not be spread at large upon the journal of this Court.

Done in open Court, this 14th day of September, A. D. 1918.

William C. Mentzer, Judge of the District Court of the First Judicial District of the State of Wyoming and the Judge before whom the above-entitled cause and action was tried.

[fols. 274 & 275] In District Court of Platte County

Clerk's Certificate

I, Harvey C. Corbridge, Clerk of the District Court within and for the County and State aforesaid, do hereby certify the hereby attached to be all of the original papers or certified copies thereof in the cause North Laramie Land Company, a Corporation, vs. Albert E. Hoffman, Ulyssis S. Jones, George S. Martin, individually and as constituting the Board of County Commissioners of Platte County, Wyoming and the Board of County Commissioners of Platte County, Wyoming.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 27th day of March, A. D. 1919.

Harvey C. Corbridge, Clerk of the District Court.

[fols. 276 & 277] Order for Injunction—Omitted; printed side page 92 ante

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[fols. 278-281] Writ of Injunction—Omitted; printed side page 94 ante

[fols. 282 & 283] Order to Show Cause—Omitted; printed side page 134 ante

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[fols. 284 & 285] In the District Court of Platte County

[Title omitted]

Order Extending Time—Filed May 9, 1918

It having appeared that the counsel of both parties have stipulated to that effect; it is ordered that the time for the plaintiff to file its motion for new trial in the above cause for injunction be and hereby is extended to and including June 9, 1918.

Enter.

William C. Mentzer, Judge.

[fols. 286 & 287] In District Court of Platte County

[Title omitted]

Order Extending Time—Filed May 9, 1918

It having appeared that the counsel of all parties have stipulated to that effect, it is ordered that the time for the plaintiff to file its motion for new trial in the above contempt proceedings be and it hereby is extended to and including June 9, 1918.

Enter.

William C. Mentzer, Judge.

[fols. 288 & 289] Findings and Decree—Omitted; printed side page 159A ante

[fols. 290 & 291] Order Overruling Motion for a New Trial—Omitted; printed side page 192 ante

[fols. 292-294] Certificate to Bill of Exceptions—Omitted; printed side page 272 ante

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[fol. 295] In District Court of Platte County

Clerk's Certificate

I, Harvey C. Corbridge, Clerk of the District Court within and for the County and State aforesaid, do hereby certify the hereto attached to be all of the Journal entries in the cause of the North Laramie Land Company vs. Albert E. Hoffman, Ulyssis S. Jones, and George

S. Martin, individually and as constituting the Board of County Commissioners of Platte County Wyoming, and the Board of County Commissioners of Platte County Wyoming.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 27th day of March, A. D. 1918.

Harvey C. Corbridge, Clerk of the District Court. (Seal.)

[fols. 296-429] [File endorsement omitted.]

[fol. 430] IN THE DISTRICT COURT, FIRST JUDICIAL DISTRICT

[Title omitted]

AFFIDAVIT OF DUMM AND CAVE

We, Irving Dumm and Wayne C. Cave, two of the regularly elected, qualified and acting members of The Board of County Commissioners for the County of Platte, being first duly sworn on our oaths according to law depose and say that the North Laramie Land Company is the owner and is interested in land bordering on either side or both sides of, and the owner and interested in, the land over which that portion of County Road No. 137, Office No. 83, is located,

Beginning at the East one-quarter (E. ¼) corner of Section Twenty-two (22), Township Twenty-five (25) North, Range Sixty-eight (68) West, thence North on the boundary line of said Section Twenty-two (22) eighteen hundred and twenty (1820) feet; thence North thirty-six (36) degrees fifteen (15) minutes East four hundred (400) feet; thence North three (3) degrees thirty (30) minutes West three hundred and eighty (380) feet; thence North thirty-nine (39) degrees fifteen (15) minutes West three hundred (300) feet to a point on the East boundary line of Section Fifteen (15), Township Twenty-five (25) North, Range Sixty-eight (68) West one hundred and fifteen (115) feet North of the Southeast corner said Section Fifteen (15) thence North on East boundary line of said Section Fifteen (15) twenty-five hundred and twenty-five (2525) feet to the East one-quarter (E. ¼) corner of said Section Fifteen (15); thence North on said boundary line one-fourth mile to the Northeast corner Southeast quarter (S. E. ¼) of Northeast quarter (N. E. ¼) said Section Fifteen (15); thence West on North boundary line of said forty one-fourth mile to the Northwest corner of said forty; thence North on forty line three-fourths mile to the Northeast corner Northwest quarter (N. W. ¼) Southeast quarter (S. E. ¼) Section Ten (10), Township Twenty-five (25) North, Range Sixty-eight (68) West; thence West on the South side of the North boundary line of said forty one-fourth mile to the Northwest corner of said forty, and there ending.

[fol. 431] That beginning at said East one-quarter corner of Section 22, Township 25 North, Range 68 West of the 6th P. M., Platte County has graded said road North on the boundary line of said section 22 for a distance of approximately 300 yards and has at a distance of 200 yards from said quarter corner constructed a substantial bridge with heavy concrete abutments, with a twenty foot span over the North Laramie Land Company's Canal; that said bridge was constructed at a cost of approximately $1,200.00 to Platte County which cost includes the expense of grading the approaches to said bridge; that said bridge is regularly used by the public in travelling over and upon said road No. 137 and across and thru the land of the North Laramie Land Company, and is a permanent structure; that along either side of said road from the East quarter corner of Section 22, Township 25 North, Range 68, thence North on the boundary line of said Section 22, eighteen hundred and twenty feet; thence North 36 degrees 15 minutes East 400 feet; thence North 3 degrees, 30 minutes West 380 feet; thence North 39 degrees 15 minutes West 300 feet to a point on the East boundary line of Section 15, Township 25, Range 68 West 115 feet north of the Southeast corner of said Section 15; thence North on East boundary line of said Section 15 2525 feet to the East quarter corner of said Section 15, the said North Laramie Land Company has constructed permanent and substantial fences, fencing said road for a distance of 30 feet each side of the center line above described, said fences being built on the West side of said road of four inch white cedar posts set securely in the ground, said posts being about 30 feet apart and having three barbed wires stretched thereon. On the East side of said center line described above the North Laramie Land Company has constructed a fence of old pitch posts for the most part, but said fence is a good, permanent, substantial fence and is made of three barbed wires and posts set not to exceed two rods apart.

Beginning at the East one-quarter corner of said Section 15, Township 25 North, Range 68, the North Laramie Land Com-[fol. 432] pany has constructed a good, substantial fence 15 feet on either side of the center line of said County road for a distance of one-fourth mile to the Northeast corner of the Southeast quarter of the Northeast quarter of said Section 15; thence West on the North boundary line of said forty; one-fourth mile to the Northwest corner of said forty, said fence on the West and South side of said road having been built by said North Laramie Land Company of new white cedar posts set 30 feet apart, securely set in the ground and three barbed wires strung tightly thereon. On the East and North side of said line said Company has built a substantial fence with old posts and three barbed wires; from said point which is the Southwest corner of Northeast quarter of Northeast quarter the road is not fenced thru the Company's land for a distance of one-fourth mile, as the road runs due West for a distance of three-fourths mile from said corner, but the last one half of said three-fourths mile of road is fenced with a good, substantial fence 15 feet on either side of the center line constituting said road survey; said fence being

constructed in the same manner and of the same materials used by said company in the other portions of its said fence.

From said point which is the Northeast corner of Northwest quarter of Southeast quarter of Section 10, Township 25, Range 68, thence West on the South side of the North boundary line of said forty, one-fourth mile, to the Northwest corner of said forty acre tract, a substantial fence has been built on either side of said center line, and 300 feet on each side thereof, the North Laramie Land Company having built the fence on the South side of said line of white cedar posts set securely and firmly in the ground 30 feet apart and having tightly strung three barbed wires thereon. The County of Platte has at an expense of approximately Three Hundred Dollars, in addition to the $1,200.00 spent for the bridge, improved said road at bad places thereon as it traverses the land of the North Laramie Land Company, said improvements having been made by means of cuts and fills.

[fols. 433-444] That said road is regularly travelled by the public and is a well travelled, commonly used public road. That said road leading thru the land of North Laramie Land Company is a public highway connecting with other portions of the same highway at either end thereof, and leads North over the North Laramie River and South over the Laramie River to Wheatland, the County Seat of Platte County.

Irving Dumm, Wayne C. Cave.

Subscribed and sworn to before me this 23rd day of June, A. D. 1921. Jesse E. Jacobson, Notary Public. My Commission expires Sept. 5th, 1921. (Notarial Seal.)

[fol. 445] IN THE DISTRICT COURT, FIRST JUDICIAL DISTRICT

[Title omitted]

AFFIDAVIT OF AYERS

William L. Ayers, being first duly sworn on his oath according to law deposes and says that he is a resident and tax payer of Platte County, Wyoming and is one of the duly elected, qualified and acting members of the Board of County Commissioners of said county and is acquainted with all of the county officers of Platte County, Wyoming; that Fred A. Lynch is the County and Prosecuting Attorney for Platte County, Wyoming and that this affiant, Irving Dumm and Wayne C. Cave are the members constituting the Board of County Commissioners of Platte Count, Wyoming; that this affiant and the other said members of the Board of County Commissioners have access to the records of Platte Count, Wyoming and are in charge of the construction of all county roads in Platte County, Wyoming, and the charts, maps and plats of said roads and are

familiar with the condition of same and particularly with the condition of County Road No. 137, Office number 83, which is the road, the construction of which is sought to be enjoined in the above action.

That at the time said action was started against the Board of County Commissioners of the County of Platte, Albert E. Hoffman, U. S. Jones and George S. Martin were the sole members of said Board and C. A. Paige was County and Prosecuting Attorney for Platte County, Wyoming, and that since said action was started all [fols. 446-452] of said persons have ceased to be county officers and are not now the representatives of Platte County, Wyoming in any official capacity.

That County Road No. 137 running thru the land of plaintiff in error, North Laramie Land Company, has been constructed by Platte County with the aid of said plaintiff in error in every particular contemplated by the proceedings of the said Board of County Commissioners in that the canal of North Laramie Land Company crossing said road, has been spanned by a substantial bridge constructed of concrete and heavy timbers, the road has been fenced on either side for the entire distance it traverses the land of plaintiff in error and the road has been graded where grading was necessary to permit travel on said road.

Affiant further states that said road has been for many months open to travel by the public and is a regular and well traveled county road and is used by many of the residents of Platte County owning land adjacent to that of North Laramie Land Company in going to and coming from Wheatland, the County Seat of Platte County, and the section of the road traversing the land of plaintiff in error is connected at either end by a well traveled public road which is a part of the same county road upon which plaintiff in error based *their* action, and Platte County, Wyoming has constructed this road and bridges thereon connecting with the road thru plaintiff's land, at a cost of many thousand dollars to the tax payers of Platte County; that plaintiff in error by its own authorized agents and employees has fenced the land along either side of the public road thru their land by erecting on either side of said road a substantial fence consisting of posts and barb wires, said posts being set securely in the ground; that to the knowledge of this affiant the said plaintiff in error, thru its agents and employees has acquiesced in public travel on this road by fencing same and by permitting the public to use it without objection or molestation.

Wm. L. Ayers.

Subscribed and sworn to before me this 2nd day of August A. D. 1921. Paul Shetler, Co. Clk. Platte Co., Wyo. (Seal.)

[fol. 453] IN THE SUPREME COURT OF WYOMING

[Title omitted]

AFFIDAVIT OF B. J. CRAMER

STATE OF ILLINOIS,
County of Cook, ss:

Burrell J. Cramer, being first duly sworn, deposes and says that he is an attorney at law, duly licensed to practice law in all the courts of the State of Illinois, and also authorized by the Supreme Court of the State of Wyoming to act as one of the attorneys for plaintiff in error in the above entitled cause while pending in said court; that he was one of the attorneys who represented said plaintiff in error when said cause was pending and tried in the District Court of the First Judicial District in Platte County, Wyoming; that, at the time of the trial of said cause, said defendants in error, individually and in their official capacity as members of the Board of County Commissioners of Platte County, Wyoming, were present, and in addition thereto, duly entered their appearances and were represented by counsel, one Mr. C. A. Paige; that said cause was tried before Honorable William C. Mentzer, Judge of said District [fol. 454] Court of the First Judicial District at Wheatland, Wyoming, on the fifth day of February, A. D. 1918, and thereafter, said cause again came up for hearing before said Judge Mentzer upon a motion for new trial; that said defendants and each of them had full notice and knowledge of all said proceedings and and all proceedings in said cause happening thereafter; that upon the said trial, and also at the time of the argument of the motion for a new trial, this affiant stated to said Attorney C. A. Paige, as well as to said defendants, Albert E. Hoffman, Ulysses S. Jones and George S. Martin that, in the event said plaintiff was defeated in said lower court, it was the purpose and intention of said plaintiff to bring said proceedings, by appropriate methods, to this Court for review, and warned and notified said defendants and said attorney that if the defendants build the road so attempted to be restrained, as more fully appears from the transcript of the proceedings of said District Court of the First Judicial District of said cause, filed with this Court, that said defendants and said attorney would do so at their peril, and protested against said Commissioners proceeding with said road pending said appeal;

That this affiant suggested to said attorney that he advise his clients that if they proceeded to construct said road, they would do so at their peril, but that said attorney refused to so instruct his clients, but, on the contrary, advised said defendants in the presence of this affiant that, in his (said attorney's) opinion, said defendants might safely proceed with the construction of said road; that thereafter, when the motion for a new trial was overruled, [fol. 455] this affiant again notified said attorney and said defendants that it was the intention of said plaintiff to bring said cause to

this Court by appropriate methods for review, and again warned said defendants not to begin construction work upon said proposed road, and said defendants and each of them had full knowledge of the acts and steps taken by plaintiff in error with respect to perfecting its petition in error for the purpose of having this Honorable Court review said proceedings had in said lower court; that since said petition in error was perfected, said defendants, individually, and acting in their representative capacity as members of the Board of County Commissioners of Platte County, Wyoming, employed attorneys to represent them, said attorneys being Messrs. Kinkead and Henderson, of Cheyenne, Wyoming, of which firm William C. Kinkead is a member; that said cause in the lower court was a case attracting great attention, and that such a case existed and had been taken to this Honorable Court by petition in error was a matter of common knowledge in the county of Platte and State of Wyoming, and particularly, Wheatland, Wyoming; that, in addition thereto, the files of said defendants in error, as such County Commissioners of Platte County, Wyoming, showed that said cause was and is pending in this Court, and any successors to said defendants in error, as such Board of County Commissioners of Platte County, Wyoming, had and have full knowledge of the facts of the pendency of this petition in error;

That, therefore, any act performed by said defendants in error, as individuals or in their representative capacity as members of the Board of County Commissioners of Platte County, Wyoming, performed or done with respect to constructing said road over the premises more particularly described in the petition heretofore filed by [fol. 456] by plaintiff in error in said lower court, and the laying out and expending of money in connection therewith, or any act done by the successors of said defendants in error as such Board of County Commissioners of Platte County, Wyoming, with respect to working on said road or laying out and expending funds for such purpose was done by the said defendants in error or their successors with full knowledge and information that said plaintiff in error had sought in said District Court of the First Judicial District to restrain said defendants, individually and in their representative capacity, from entering upon the lands of plaintiff in error for the purpose of constructing said road or doing any of the acts of said defendants in error now claim they have voluntarily done, and well knew before beginning any work or expense on said road and bridges, that said plaintiff in error had, by petition in error, brought said cause to this Court for review, and well knew that, in the event this Honorable Court should determine that error was committed in the trial of the case below and that the said injunction, as prayed for, should have been granted, that this Honorable Court likewise has authority to issue a mandatory injunction compelling said defendants, individually or in their representative capacity, or their successors, to remove all obstructions and constructions placed by said defendants in error, individually or in their representative capacity, or their successors in office upon the lands of plaintiff in

error; or such other order as to this Honorable Court shall seem just. [fol. 457] This affiant further states that he has been informed by one having personal knowledge of the facts, as well as by the affairs of said North Laramie Land Company, that said Land Company has never built any bridges across said road where it crosses any of the Land Company's ditches or canals or graded said road at any place or directly or indirectly aided said Commissioners in the construction of said road;

This affiant says that said North Laramie Land Company is the owner of valuable lands which land is irrigated by means of an irrigation system terminating in a certain No. 3 Reservoir and an outlet leading therefrom to a ditch or canal. That in connection with said Reservoir is a large dam or concrete slab facing through which is the outlet to said reservoir; that said road constructed by said Commissioners runs very close to said dam and cattle, persons and vehicles trespassing upon the property of said Land Company, would irreparably injure the dam, ditch, crop and property of said Land Company, and therefor- it became necessary for and the said North Laramie Land Company did construct at great expense, lawful fences along either side of said road.

This affiant further states that said plaintiff in error was prompt in filing its petition in error to this Honorable Court, and has diligently and persistently prosecuted said petition to an early hearing and decision, indeed the plaintiff in error has been importuning this Court a number of times during the pendency of the motion for re-hearing of the order of dismissal heretofore entered, and amendment of the [fols. 458-478] petition, and is extremely anxious that final hearing and final decision of this case be had.

The plaintiff in error is prosecuting its petition in good faith, confident in the belief that the judgment of the lower court was erroneous and should be reversed. The questions involved in this petition in error present not only questions arising under the constitution and laws of the State of Wyoming, but also under the Federal Constitution, and the plaintiff in error has been pursuing with diligence and insistence a decision of this case by this Court, so that if for any reason the decision is not in accordance with what the plaintiff in error believes to be its rights in the premises it can promptly prosecute its application for a review by the Supreme Court of the United States.

This affiant further represents to this Honorable Court, that to dismiss the petition in error for the technical and frivolous reasons urged by the defendants in error would be to deny the plaintiff in error its day in Court, its right to a hearing upon the merits, and would be a taking of its property without due process of law.

Burrell J. Cramer.

Subscribed and sworn to before me this 23rd day of August, A. D. 1921. Charles J. Horn, Notary Public. (Notarial Seal.)

[fol. 479] IN SUPREME COURT OF WYOMING

[Title omitted]

ORDER SETTING CAUSE FOR HEARING

It is ordered that the above entitled cause be, and the same is hereby, set for hearing on Tuesday, May 22, 1923, at ten o'clock a. m.

[fol. 480] IN SUPREME COURT OF WYOMING

[Title omitted]

ARGUMENT AND SUBMISSION

This cause coming on this day to be heard, come now the parties hereto by their respective attorneys of record, Burrell J. Cramer, Esq., and M. A. Kline, Esq., appearing for plaintiff in error, and William C. Kinkead, Esq., and C. R. Ellery, Esq., appearing for defendants in error; whereupon, the argument of counsel is heard and said cause is taken under advisement, the court reserving its decision for further consideration.

[fols. 481 & 482] IN SUPREME COURT OF WYOMING

[Title omitted]

JUDGMENT—October 18, 1923

This cause having been heretofore taken under advisement, the court being now fully advised in the premises, doth say and find that there is no reversible error in the record of the proceedings of the district court of Platte County in this cause. It is therefore ordered and adjudged, for the reasons stated in the opinion herein this day delivered and filed, that the judgment of said district court therein be, and the same is hereby, affirmed. It is further ordered that the costs of this proceeding in error be taxed against the plaintiff in error, and the court doth certify that there was reasonable cause for the proceeding in error.

[fol. 483] IN THE SUPREME COURT, STATE OF WYOMING

[Title omitted]

OPINION—October 18, 1923

BLUME, Justice:

This is an action brought by the North Laramie Land Company, plaintiff below and plaintiff in error here, against the Board of County Commissioners of Platt County, defendant below and defendant in error here, claiming the illegality of the establishment of

a certain road running through and taking part of plaintiff's land. The petition, after setting forth most of the proceedings of said board, prays that said defendant "be perpetually restrained from taking any further proceedings or doing acts with respect to locating said proposed road," and "from confiscating or appropriating any of the rights, properties and lands of the plaintiff for the purpose of [fol. 484] using same for a public road or highway as contemplated, or for any other unlawful purpose, and for such other relief as may seem to the court equitable." The case has heretofore been heard on motions to dismiss (26 Wyo. 327, 184 Pac. 226; 27 Wyo. 271, 195 Pac. 988, 28 Wyo. 183, 201 Pac. 1022) and is now up for disposition on its merits.

1. Counsel for plaintiff contend that this is a direct attack on the order of the Board establishing the road, while counsel for defendant contend that this is a collateral attack thereon. We think the point is controlled by the case of Edwards v. City of Cheyenne, 19 Wyo. 110, 148, wherein the plaintiff sought to have condemnation proceedings adjudged void and to have the defendants enjoined from occupying and claiming the land taken therein, and it was held that the attack was collateral. In that case the prayer of the petition was much broader than that in the case at bar. In the case of Clark v. Drainage Commissioner, 50 Mich. 619 the plaintiff brought a suit in equity for annulment of proceedings establishing a drain and enjoining the collection of a tax, and the attack was considered collateral. In the case of Jarrell v. Cole, 215 Fed. 315, L. R. A. 1916 E 298, the plaintiff sought, among other things, the annulment of proceedings of a court disposing of certain property, and the attack was considered collateral. Nichols, on Eminent Domain, 2, Sec. 425, page 1122, says:

"So also, when land has been taken by eminent domain by a tribunal having jurisdiction over the person of the owner and the subject matter of the taking, the owner cannot resist the proceeding or prevent the occupation of his land by a bill in equity * * * upon such grounds as the inadequacy of the petition, irregularities in the proceedings," etc.

In one jurisdiction, at least, every proceeding attacking a judgment of a tribunal, not by way of appeal or proceeding in error or to vacate it as provided by statute, is considered a collateral attack. Johnson v. Carroll, 190 Ky. 689, 228 S. W. 412, and cases [fol. 485] cited. The plaintiff in this case did not avail itself of the proceedings in error which are provided by section 6370 of the W. C. S. 1920, and it seems to be held quite generally that where such proceedings are not taken, a bill in equity will not lie, unless special equitable reasons exist, as for instance, that to establish plaintiff's case, evidence aliunde is necessary, which is not available to him in a proceeding for review, 23 Cyc. 978 et seq., 1012. In this case plaintiff apparently relied upon no evidence except that furnished by the record itself, and no allegation was made in the

petition that evidence aliunde was necessary to its case. It may, therefore, be doubted whether it pursued the proper remedy herein. We need not, however, decide that point.

Without investigating the question carefully, it would seem that the point whether this is considered a collateral or a direct attack is of no particular importance herein, or at least not of the degree of importance which seems to be attributed to it by counsel. A bill in equity, even though considered a direct attack, does not take the place of a proceeding in error. We know of no case, and none has been cited, holding that all of the same errors can be set up as grounds of complaint in the former which may be grounds for reversal in the latter. There must be certain, definite grounds for setting aside a judgment of a tribunal, such as want of jurisdiction, or fraud, accident, mistake, or other circumstance peculiarly within the cognizance of equity, which authorizes resort to a bill in equity to set aside a judgment of a court or judicial or quasi-judicial tribunal. 23 Cyc. 977, 978, 993. Errors and irregularities cannot be reached in a strictly collateral attack nor by any bill in equity not specially provided by statute for the purpose of review. 23 Cyc. 1002, 1090, et seq.

[fol. 486] What is an error or irregularity as distinguished from an illegality, a mandatory or jurisdictional requirement, is not always easy to determine. It depends somewhat on the importance which is by statute attached to a particular step in the whole scheme of procedure. Generally speaking, provisions only which are enacted for the special benefit of interested parties should, in a proceeding of this kind, be construed as mandatory and jurisdictional. Nichols on Eminent Domain, 2, Sec. 425. See also Bunten v. Rock Springs Grazing Ass'n., 29 Wyo., —, 215 Pac. 244, 255, where this was pointed out in connection with the power of taxation.

Again speaking generally, want of jurisdiction may be set up in a bill in equity brought for the purpose of setting aside a judgment on that ground, or it may be raised in a strictly collateral attack. 23 Cyc. 993, 1073. So that if no equitable grounds, such as fraud, accident, mistake or the like exist, relief in a bill of equity may be had only for want of jurisdiction and hence it would seem to make little difference whether, under the facts herein, we call this action a direct or collateral attack.

There are cases which consider a proceeding similar to this a direct attack. Williams v. Rout County, 37 Colo. 55, 84 Pac. 1109; Johnson v. Town of Clontarf, 98 Minn. 281; Follette v. Pacific Light & Power Corp. (Cal.) 208 Pac. 295, 299; Jordan v. Jordan (Tenn.) 239 S. W. 423, 425; 23 Cyc. 1065. In all of the cited cases relief was sought for want of jurisdiction over the person. It is the law in many states, based upon the old common law rule that the record is a verity, that where the face of the proceedings are regular, and particularly where the record recites that the tribunal has jurisdiction, evidence aliunde is not admissible in a collateral attack to show want of jurisdiction not so disclosed on the face of the

[fol. 487] record. For a discussion of this subject see Black on Judgments, Sec. 270 to 277. And it would seem that, in order to relieve the harshness which that rule would sometimes involve, a bill brought for the purpose of setting aside a judgment for want of jurisdiction is sometimes called a direct proceeding, for otherwise no relief on that ground would in some jurisdictions exist at all. See Jordan v. Jordan, supra. Whether we should call a proceeding like that at bar one that is direct when similar reasons arise is not necessary to be decided herein.

2. Before proceeding to the consideration of any other questions, it may be well briefly to consider the point made that in highway proceedings a petition in accordance with the requirements of the statute, the appointment of a viewer and the report of the viewer are steps that are jurisdictional and must be strictly followed. Our attention has been called to many cases from other states decided under statutes different from ours and which, therefore, do not furnish a precedent. Under many statutes a hearing is had directly upon the petition, after notice has first been given to property holders. Where that is the law, the importance of the petition is apparent. In other states, the proceeding seems to be essentially one initiated by individuals. In this state, under the law as contained in the statutes of 1887 (Sec. 3859-3868), the petition, when filed, was required to be accompanied by satisfactory proof of notice given to all interested parties that application to lay out a road would be made to the county commissioners at their regular session; the petitioner was required to notify the viewer and surveyor to meet, and a subsequent notice given by the county commissioners called attention to the filing of the petition. These provisions show that importance was attached to the petition. Some radical changes [fol. 488] in the law were subsequently made by Chapter 86 of the Session Laws of 1890 and Chapter 143, Session Laws of 1895. The law as enacted in 1895 is substantially the same as it is now and as it was at the time the road involved in the case at bar was established.

Sections 2988 and 2990, W. C. S. 1920 provide:

"Sec. 2988. Any person desiring the establishment, vacation or alteration of a public road, shall file in the office of the county clerk of the proper county, a petition signed by ten or more electors of the county residing within fifteen miles of the road proposed to be established, altered or vacated, in substance as follows: To the Board of county commissioners of —— county. The undersigned ask that a public road, commencing at —— and running thence — and terminating at ——, be established (altered or vacated as the case may be).

With said petition shall be filed a list containing the names and also the known postoffice address of each person owning or having an interest in any land over which the proposed establishment, vacation or alteration of a public road is to be made."

"Sec. 2990. Upon the filing of such petition the board of the

county commissioners at a regular or special meeting, or the chairman of said board, if in his judgment an emergency exists, shall appoint a suitable and disinterested elector of the county, who may be a member of the board of county commissioners, to examine into the expediency of the proposed road, alteration or vacation thereof, and to report immediately."

The viewer is required by section 2993 to make his report in writing, stating whether in his judgment the road is practical, whether it shall be established or not, the expense thereof, including the damages and benefits to property owners, "and such other matters therein as shall enable the said board to act understandingly." But the action and report of the viewer is not apparently deemed of importance, for sections 2995 and 3003 provide that the county commissioners may decide to lay out a road "upon considering and acting upon the report of the viewer, or otherwise." The further provisions of the law, too, indicate the right of the board of commissioners, to establish or alter a road independent of any [fol. 489] preliminary proceedings. Sec. 2996 provides that the board shall fix a time for filing claims for damages, if the board decides to establish, not the road petitioned for, or recommended by the viewer, but any road, and the notice provided to be given refers to no preliminary proceedings whatever, but informs interested parties that "the board of county commissioners have decided to locate a road." Section 3007 provides in the first part thereof for a road consented to by all and then proceeds:

"* * * The board of the county commissioners, when in their judgment such action shall be in the interests of economy or the public good, may purchase or receive donations or rights of way for a public road, or any alteration thereof, or any part thereof, from any and all persons along the route thereof, and declare the same opened, whenever the consent of the owners of the land through which said proposed road or alteration shall run, has been obtained, either by the donations of land or when an amicable adjustment of the amount to be paid therefor has been made between such land owners and said board; and all roads or parts of roads or alteration of roads heretofore opened or made, by consent or adjustment of damages, without recourse to other proceedings, are hereby declared to be public roads, the same as if such roads had been legally opened, or said alterations legally made."

By this provsion, particularly when construed in connection with other provisions hereinabove mentioned, the board apparently may establish any road deemed necessary in its discretion without any preliminary proceedings whatever, except that whenever the land is not given "or an amicable adjustment of the amount to be paid therefor" has not been made, it must proceed to condemnation proceedings as provided by law. Hence it is at least a question whether any preliminary proceedings are, under our law, jurisdictional. The

point would be clearer were it not for section 2999 which provides that if objections or claims for damages are filed, the further hearing on the application may be continued." The point has not been argued, and we need not decide it, but sufficient appears to make it [fol. 490] clear, that we cannot, in a collateral attack, be asked to give too strict an interpretation to provisions for proceedings which, though taken, appear to be of minor importance in the establishment and alteration of highways. And, further, what we say hereafter will be said with the distinct understanding that we do not pass upon the question whether the board of county commissioners has or has not power to establish or alter any county roads without any petition previously filed or any preliminary proceedings taken previous to the giving of notice and fixing the time therefor.

3. There is in the record a petition, hereinafter termed the regular petition, in the statutory form, dated March 21, 1917, filed April 4, 1917, signed only by one signer—John Mullin. If this were the only petition filed, then since the face of the record itself shows that the statute has not been complied with in the essential requirement that 10 qualified electors shall sign the petition, the proceedings would be void. Eads v. Kumley (Ind. App.) 119 N. E. 219; Bailey on Jurisdiction, Sec. 21; 23 Cyc. 1059; The board of county commissioners could, obviously, not decide that the requisite qualified electors had signed, when the face of the petition itself clearly shows the contrary. There is in the record, however, another paper, herein mentioned as the "waiver", purporting to be signed by ten people, reciting:

"We, the undersigned, being all the oners of land through which the following proposed road will pass, in consideration of the board of the county commissioners of Platte County, declaring the said — a county road, do hereby covenant and agree with the said board of the county commissioners of said Platte County, Wyoming, that we will each and all of us waive any and all claims to damages for the land taken for such road, and for moving fences and building fences, and hereby donate to said county a right of way for such road:" (here describing the same road that is described in the regular petition.)

[fol. 491] This document itself is not marked filed, but it was contended by defendant on the trial below, that the two sheets of paper were fastened together, as one document, and circulated as together constituting the petition for the road, and that it makes no difference at what place in a document the signature appears. Evidence was introduced in the trial tending to show the contention to be true. Counsel for plaintiff claim, first, that the evidence was not admissible, and second, that the contention is not sustained by the evidence. The testimony in the case shows that the last mentioned paper was circulated beginning with the fall of 1916 to the spring of 1917. The regular petition is dated March 21, 1917, the date is written in the same ink and handwriting as the remainder of the writing on

the paper, indicating that it never came into existence till the day it bears date and that it could not have been in existence at the time when the other paper was circulated. Other circumstances exist which indicate the truth of this theory. It is, however, possible, as stated by counsel for defendant, that the date was not inserted until the two papers were returned and filed with the county clerk; that the date was written by the same man who wrote the main body of this document and with the same kind of ink, and that the intervening time is so great, that it would be impossible for us to detect any difference between writings thus made at intervals of approximately six months. Then, too, the circumstance that the regular petition was marked filed and the waiver not, gives color to the contention of defendant that the two papers were fastened together and circulated as one document. The trial court heard the witnesses, and we are unable to say that its finding, sustaining the contention of defendant, is not correct. Nor can we sustain the other conten- [fol. 492] tion that the evidence above mentioned was inadmissible. If the two papers had in fact originally been one sheet, and the paper had been torn in the middle, surely no claim could be made that, in order to identify the two pieces as one document, evidence to that effect could not have been admitted. Or, if, again, the whole, as one document, had been written on a typewriter, the regular petition herein constituting the first sheet, followed by the waiver with all the signatures as the second sheet, and the sheets had in some manner been separated, it could hardly be contended that in such case, in order to identify the pieces of the same document, evidence to that effect would not have been admissible. The situation in the case at bar is similar. It is, of course, immaterial, where the document is signed (Smith v. Goldsborough, 80 Md. 49), although the place of the signature might be an important circumstance in showing that the person whose signature appears therein at an irregular place is not the party who in fact executed it. Counsel treat the testimony offered herein as an attempt to show a jurisdictional fact by evidence aliunde, which they claim cannot be done, and they cite some authority to that effect. It is true that there are cases so holding. Many authorities, however, hold the contrary. 29 C. J. 468, 470; Brown on Jurisdiction, 105, 132, 139, 140, 144, 193, 266; Black on Judgments, Sec. 282; Banse v. Town of Clarke, 69 Minn. 53; Ivory v. Town of Deerpark, 116 N. Y. 476, 484; Cox v. Comm'rs of Highways, 194 Ill. 355, 456; Willis v. Sproule, 13 Kans. 257; Pettis v. Johnston, 78 Ok. 277, 190 Pac. 681. We need not decide what the rule should be in ordinary cases, but we are clear that the evidence identifying pieces of one document should be held admissible even though incidentally, as here, involving the establishment of a jurisdictional fact.

We are led to the foregoing conclusion the more readily in view [fol. 493] of the fact that we are inclined to think that it would not be altogether improper, in a proceeding of this kind, to consider the so-called waiver alone as a sufficient statutory petition. The statute only requires a description of the proposed road and a request on

the part of the signers of the petition that the road be established. The so-called waiver clearly contains the first requirement. The signers state that in consideration of the board declaring the proposed road a county road, they waive all damages and donate their land to the county for said road. They thereby, we think, at least impliedly ask the board to establish the road, and if that is true, this document must be held sufficient on a collateral attack. The authorities seem to be unanimous that the petition commencing a proceeding need not be perfect in every respect. Van Fleet, supra, Collateral Attack, Sec. 61 states as follows:

"The rule is this: Can it be gathered from the allegations, either directly or inferentially, that the party was seeking the relief granted, or that he was entitled thereto? If it can, the allegations will shield the judgment from collateral assault. All the cases agree that if the allegations tend to show, or colorably or inferentially show, each material fact necessary to constitute a cause of action, they will uphold the judgment collaterally."

See also Brown, Jur., Sec. 22, page 120; State v. Kusel (Wyo.), 213 Pac. 367; Stoddard v. Johnson, 75 Ind. 20, 29; Pickering v. State, 106 Ind. 228, 232; Robinson v. Rippey, 111 Ind. 112, 119; Ely v. Board, 112 Ind. 361; Jackson v. The State, 104 Ind. 516; Hall v. McDonald, 171 Ind. 9; Harris v. Curtis, 34 Ind. App. 438; In Re Ross' Estate, 180 Cal. 643, 182 Pac. 752; Conners v. McAfee (Tex. Civ. App.) 214 S. W. 646; Pearson v. Lloyd (Tex. Civ. App.) 214 S. W. 759; Cole v. Parker-Washington Co., 276 Mo. 220, 207 [fol. 494] S. W. 749; Acequia Del Leano v. Acequia De Las Jovas, 25 N. M. 134, 179 Pac. 235; Board of Commr's v. Equitable Inv. Trust Co., 80 Kan. 492, 103 Pac. 996; cases in Note L. R. A. 1916 E, p. 316. We see no valid reason why the foregoing rule should not be applicable in a case like that at bar, and we think that it may be inferred from the statements contained in the so-called waiver that the signers thereof were asking the board to establish the road described therein. We must, accordingly, treat the petition in this case as complying with the statute and as regular on its face.

4. Counsel for plaintiff contend not only that ten signers of the highway petition must be qualified electors residing within 15 miles of the road, which is conceded, but, further, that this requirement being jurisdictional, compliance therewith must affirmatively appear of record; that it does not so appear here, and hence the proceedings herein must be adjudged void. Plaintiffs introduced in evidence what is termed the "record of the proceedings of the board of county commissioners of Platte County." In that record of proceedings is a document purporting to be executed by the Board of Commissioners of said county, signed by the chairman and clerk of said board, under seal, directed to A. E. Hoffman. It recites that said Hoffman had been appointed as viewer at the regular session of said board held on April 4th, 1917. It describes the road and proceeds with the following recital: "said petition being signed by at least ten electors of said county, residing within 15 miles of where said road is asked

to be located." Such recital has at times been deemed to be sufficient on collateral attack (29 C. J. 469), though there is authority to the contrary. Had this recital been contained in the journal entries of said board, the point in question probably would not have been [fol. 495] raised. It would seem not to be necessary, in the absence of a statutory requirement that the fact above mentioned should appear in any particular part of the record of the proceedings of said board. Galena etc. R. Co. v. Pound, 22 Ill. 349, 414; 15 C. J. 843. The statute does not provide what shall constitute the record of the proceedings of county commissioners in highway cases. No judgment roll is made up, as was the custom at common law in courts of record. And in the absence thereof, the minutes and files of the board are probably to be regarded as such, and probably everything appearing therein may be considered. Hahn v. Kelly, 34 Cal. 391, 427; Morrow v. Weed, 4 Ia. 127; Norrell v. McHenry, 1 Mich. 227; Thayer v. McGee, 20 Mich. 195; Freeman on Judgments, Sec. 86. See Sharp v. Lumley, 34 Cal. 611, 614. In the case at bar the document above mentioned is marked filed as part of the report of the viewer, which report was favorably acted on by the board of commissioners. Such report is specifically provided for by statute and the whole thereof, therefore, is no doubt a part of the record. Indeed, it may be questioned whether plaintiff, after introducing the document as part of the record of the proceedings of said board, could now be heard to question that it is, in fact, a part of said record. Since the recital mentioned is, however, contained in a document which was probably, in fact, executed only by the chairman of said board instead of said board itself, we prefer to rest our decision on the point now under consideration on another ground. There is much conflict on the question among the authorities. The contention of counsel for plaintiff might be correct, if the statute required the record to show the required qualification of the signers of the highway petition, but no such statute has been pointed out.

[fol. 496] Some courts hold that where, as in this state, the statute gives exclusive and general jurisdiction to the board of county commissioners to establish and alter county roads, the action of the board in establishing a highway carries with it the same presumption as to compliance with all precedent statutory requirements as a decree of a court of general jurisdiction. Road Imp. Dist. v. Winkler, 102 Ark. 553; Henline v. People, 81 Ill. 269, 292; Nealy v. Brown, 6 Ill. 10, 18; Dumass v. Francis, 15 Ill. 543, 546. Text writers, too, take this view. Elliott, Roads & Streets (3rd Ed.) Sec. 324; Elliott's Gen. Prac. Secs. 151, 154; Van Fleet, supra, Sec. 811, 812. See also Kidder v. Jennison, 21 Vt. 108. Without, however, committing ourselves to this view, not all the steps in the procedure leading up to the final order establishing the road need be shown, and we think the authorities are nearly unanimous in holding, or at least the greater weight of authority is to the effect, that if a tribunal of limited jurisdiction has general jurisdiction of the subject matter, and the record discloses the facts necessary to call the jurisdiction of the tribunal over the particular case into action, then, in a collateral attack, the same presumption exists that the tribunal has acted legally and

properly and had jurisdiction to proceed and make the final order as exists in the case of courts of general and superior jurisdiction. Elliott, Roads & Streets, Sec. 325; Lewis, Eminent Domain (3rd Ed.) Sec. 869; 15 C. J. 834; 15 R. C. L. 882; Black on Judgments, Sec. 286; Van Fleet, supra. Sec. 806; Brown, on Jurisdiction, Secs. 20a and 22; State v. Edwards, 192 Mo. App. 413, 182 S. W. 816; Cyr v. Dufour, 62 Maine 20; Galena etc. R. R. Co. 22 Ill. 399, 415; McCarthy v. Whalen, 19 Hun. 503; Leonard v. Sparks, 117 Mo. 103, 114 and cases cited; State v. Dugan, 110 Mo. 138, 19 S. W. 195; [fol. 497] Davenport Mut. Sav. Fund v. Smith, 15 Iowa 213; Grignon's Lessee v. Astor, 2 Howard 319; Furgeson v. Jones, 17 Or. 204, 20 Pac. 842; Jones v. Leeds, 41 Ind. App. 164, 83 N. E. 526; Cason v. Cason, 31 Miss. 578; McGrady v. Clary, (Tex. Civ. App.) 247 S. W. 1099; Board of Commissioners v. Markle, 46 Ind. 96, 112; Cooper v. Sutherland, 3 Iowa 114, 135. The last two cases contain an exhaustive review of the authorities. We think, as we shall immediately proceed to show, that jurisdiction in this case attached upon the filing of the petition herein, which is a part of the record. Thereupon the foregoing presumption came into operation, and hence it must be presumed that the board proceeded regularly and legally. This necessarily includes the fact that it decided, and decided correctly, that the conditions precedent to its right to proceed existed.

The statute provides a specific form of petition, does not require that it shall state the qualification of the signers, and clearly, therefore, such statement therein cannot be held to be essential thereto. Humboldt County v. Dinsmore, 75 Cal. 604, 17 Pac. 10; Bewley v. Grover, 17 Or. 274; Bockoven v. Board, 13 S. D. 317, 322; Snoddy v. Pettis County, 45 Mo. 361; Tingue v. Village of Port Chester, 101 N. Y. 294, 4 N. E. 625; Keys & Crawford v. Tait, 19 Iowa, 123; Sneed v. Falls County, 91 Tex. 168; Robeson v. Byler, 14 Tex. App. 374; Hall v. McDonald, 171 Ind. 9 and cases cited; Aetna Life Ins. Co. v. Jones, 173 Ind. 149; Elliott, Roads & Streets (3rd Ed.) Sec. 377. It is a universal rule that where a petition is required to be filed in a cause, the filing of one that is sufficient, legal notice of the proceedings being given, confers jurisdiction and sets in motion the power of the tribunal to hear and determine the cause. Van Fleet, [fol. 498] supra, Sec. 60 et seq., where many illustrations applying to both superior and inferior courts are given. Black, on Judgments, Sec. 241; Herrett v. Irrigation District, 86 Or. 343, 168 Pac. 609; Eagle Cliff Fishing Co. v. McGowan, 70 Or. 1, 137 Pac. 766; Owen v. Brown, 78 Misc. Rep. 273; 139 N. Y. S. 451; Lake Shore & M. S. Ry. Co. v. Clough, 182 Ind. 178, 104 N. E. 975; 105 N. E. 995; Dippold v. Cathlamet Timber Co., 98 Or. 183, 193 Pac. 909; Ellis v. Ry. Co. (Tex. Civ. App.) 208 S. W. 172. To this should be added the authorities already cited to the effect that a petition need not be perfect. The giving of legal notice, to acquire jurisdiction over the parties interested, is not questioned in this case. It was not necessary in a proceeding like this, which is in the nature of a proceeding in rem, that it be given at the commencement thereof. Roszell v. Coal Corp., 235 Fed. 343. Further, while the petition must con-

tain the requisite allegations to set the jurisdiction of the board in motion, it would seem that one containing all of the allegations required by statute should be deemed sufficient for that purpose, and bring into operation the presumption above mentioned. True, the requirement that the petition shall be signed by a certain number of qualified electors is a condition precedent to the right of the board to proceed, and is, in a sense, jurisdictional. We think, however, that it is simply one of the facts to be decided by the board. The statute does not specifically so provide, but that is not necessary. The board is authorized to appoint a viewer only upon the filing of the proper petition and publish notice of its intention to establish the road. Objections may be filed, and the board must pass upon these objections, as well as upon the petition. These provisions clearly indicate that the statute intends the board to pass upon the question as to whether or not a sufficient number of proper and qualified per-[fol. 499] sons have signed the petition. Freeman on Judgments (4th Ed.) Sec. 523; Spaulding v. Homestead etc. Ass'n, 87 Cal. 40; see also 15 C. J. 851, Sec. 170. Jurisdiction is the power to proceed, hear and determine. The determination of the existence or non-existence of the above mentioned fact is not jurisdiction but the exercise of jurisdiction; and where such fact is, by statute or otherwise, intended to be decided by the board, it must necessarily be a fact to be decided after jurisdiction has already attached. Requirements which set the power of a court or tribunal in motion are strictly jurisdictional and without them the proceedings are a nullity; but other requirements, in the nature of conditions precedent, which are in the power of a court or tribunal to adjudicate, are quasi-jurisdictional. 23 Cyc. 1074; Reinach v. Atlantic Etc. R. R. Co., 58 Fed. 33; Roszell v. Coal Corp. 235 Fed. 343; Noble v. Union River Logging Co., 147 U. S. 165, 13 Sup. Ct. 271; Whitford v. Whitford, 100 Ark. 63, 139 S. W. 653; Blanton v. Forest City Mfg. Co., 138 Ark. 508, 212 S. W. 653; Blanton v. Forest City Mfg. Co., 138 Ark. 508, 212 S. W. 330. Service of process, seizure and possession of the res within the bailiwick in a proceeding in rem, death of a person to warrant the appointment of an administrator or executor, actual capture of a vessel to warrant its condemnation, actual service in the military or naval service to warrant a court martial to condemn a man, have been cited as requirements strictly jurisdictional. Nobel v. Union River Logging Co., supra. So the total absence of a petition or a petition so insufficient as not to call into motion the jurisdiction of the board of county commissioners in the case at bar, or want of service of notice, would, no doubt, be of the same nature. Elliott, Roads & Streets, Sec. 339. On the other hand, requisite diversity of citizenship in federal courts, the amount in controversy, the existence and amount of debt of a petitioning debtor in involun-[fol. 500] tary bankruptcy; that there is insufficient personal property to pay the debts of a decedent, when application is made to sell his real estate; that one of the heirs of an estate had reached his majority; that a cause of action arose in another county, in which case a justice of the peace had no power to try a case; that a cor-

poration adjudged a bankrupt had its principal place of business in the district, are given as illustrations of what are quasi-jurisdictional facts. Noble v. Union River Logging Co., supra; Newton v. Wade, 43 W. Va. 283; Hill v. Gordon, 45 Fed. 276; Donham v. Springfield Hardware Co., 62 Fed. 110; Roszell v. Continental Coal Corp., supra. And it seems clear that the requirement in this case, that qualified electors should sign the petition, is of the same nature and character as the illustrations of quasi-jurisdictional facts given above.

It is frequently held that a finding of these quasi-jurisdictional facts is implied—presumed—from the fact that the board proceeded in the matter to a final adjudication of the cause, and that a finding, express or implied, is not alone presumed correct, but is conclusive on collateral attack. Freeman on Judgments, Sec. 531 (end) says:

"There are many instances in which it is the duty of an officer or board to make inquiry concerning a jurisdictional fact, and not to proceed unless it is found to exist. Where such is the case, an express finding of the fact, or a finding implied from proceeding as though such fact had been ascertained to exist, is generally conclusive, and the ultimate decision cannot be avoided by showing that such fact did not exist."

To the same effect see Elliott, Roads & Streets, Sec. 326; 15 C. J. 852.

We need not go that far in our decision, and need only hold that, jurisdiction having attached, the board is presumed to have decided, and decided correctly, the existence of the facts authorizing it to proceed to the final determination of the cause. Hence these [fol. 501] facts need not appear on the face of the proceedings. And this is the holding of many authorities. 29 C. J. 469; Keys & Crawford v. Tait, 19 Iowa 123; Sneed v. Falls County, 91 Tex. 168; Robeson v. Byler, 14 Tex. Civ. App. 374 (direct proceedings); Cyr. v. Dufour, 68 Maine 492; Snoddy v. County of Pettie, 45 Mo. 361; State v. Court, 108 Wash. 58, 182 Pac. 92; Humboldt County v. Dinsmore, 75 Cal. 604, 17 Pac. 10; Pittsburgh etc. R. Co. v. Gregg, 181 Ind. 42; The City of Bloomington v. Phelps, 149 Ind. 596, 49 N. E. 581 and cases cited; Page v. Gilbert, 32 Hun. 299. To the same effect, though in a somewhat different class of cases, are Oliver v. Monona County, 117 Iowa 43, 52; McNair v. State, 26 Neb. 257, 261; Beebe v. Scheidt, 13 O. S. 406; Scovern v. The State, 6 Ohio St. 288; State v. Hanson, 80 Nebr. 774, 115 N. W. 294; Roszell Bros. v. Continental Coal Co., supra. In the case of Keyes & Crawford v. Tait, supra, the court disposed of the question in hand as follows:

"It is objected that the petition does not itself state, nor does the record of the commissioner's court recite that the petitioners are householders. This omission we decide to be not fatally defective, if the road is otherwise a legal one."

In the case of Sneed v. Falls County, supra, the court holding that under the statute it was not necessary that either the petition

or an express finding should show the qualification of the signers of the petition goes on to say as follows:

"The State had the inherent right to take the property for a public road, and the owner had no right to question its determination to do so, but his sole right was to have compensation. The real purpose of the proceedings, so far as he is concerned, is to determine the amount of such compensation. City of San Antonio v. Grandjean, recently decided by this court. It is not reasonable, therefore, to suppose that in enacting a law, the main purpose of which as to the owner was to provide a method of ascertaining the compensation, the Legislature ever intended to encumber it with so many technical [fol. 502] and unreasonable requirements, not conducive to a correct and just determination of the compensation to be paid, but merely serving as impediments in the way of the duly constituted authorities in attempting to open up necessary highways."

In the case of Grignon's Lessee v. Astor, 2 Howard 319, while not a road case, the court considered the record of a tribunal of inferior jurisdiction, an orphan's court, in connection with its order granting permission or license to sell real estate. The court said:

"Nor is it necessary that a full or perfect account should appear in the records of the contents of papers on file, or the judgment of the court on matters preliminary to a final order; it is enough if there is something of record which shows the subject matter before the court, and their action upon it, that their judicial power arose and was exercised by a definitive order, sentence or decree. * * * The granting the license to sell is an adjudication upon all the facts necessary to give jurisdiction, and whether they existed or not is wholly immaterial, if no appeal is taken; the rule is the same whether the law gives an appeal or not; if none is given from the final decree, it is conclusive on all whom it concerns. The record is absolute verity, to contradict which there can be no averment or evidence; the court having power to make the decree, it can be impeached only by fraud in the party who obtains it."

It is not necessary, in this case, as we have heretofore stated, to go as far as the case just cited and others of a similar tenor, in holding that the decision, express or implied, on jurisdictional or quasi-jurisdictional facts, is conclusive. Other cases hold the contrary. Beardlee v. Dolge, 143 N. Y. 160, 38 N. E. 205, 42 A. S. R. 707; Roberts v. Easton, 19 O. S. 78; Brown on Jurisdiction, Sec. 193; Bailey on Jurisdiction, Sec. 173; and see dissenting opinion of Mr. Justice Bradley in Town of Colonna v. Eaves, 92 U. S. 484. There may be steps in highway proceedings, which, if non-compliance therewith is shown, may vitiate the proceedings even in a collateral attack, since, after all, the jurisdiction acquired by the board is sim- [fol. 503] ply jurisdiction to proceed to a final determination of the case in the mode provided by law. Elliott, Roads & Streets, Sec. 328; Lewis, Eminent Domain, Sec. 868. Further, there may be ground for holding, where no express finding of jurisdictional or

quasi-jurisdictional facts is made, but there is simply an implied finding, that evidence aliunde should be admissible to show the true facts. Hence we simply hold that after jurisdiction in highway cases has been shown to have attached by the filing of a petition in the statutory form, and it appears of record that notice has been given as provided by law, then, as included in the presumption that the board proceeded regularly and legally, the existence of all other jurisdictional or quasi-jurisdictional facts necessary in order to legally make the final order establishing the road will be presumed in the absence of a showing to the contrary either by the record itself or by evidence aliunde. We might add here, without discussing the evidence in detail, that while it is argued to some extent that the evidence in this case shows affirmatively that less than the required number of qualified electors signed the highway petition herein, the contention of disqualification is true only as to one of the signers, still leaving 10, the required number, who are non shown to have been disqualified.

The difference between the cases holding the rule contended for by counsel for plaintiff and the cases holding the rule herein approved is not as great as appears at first blush. The difference is, in fact, but slight. The principle that the record of the proceedings should show the qualification of the signers of the petition really requires, in strict logic, nothing less than the preservation in the record of the evidence submitted to the board on that point. But we know of no case which goes that far. A showing of facts, appear- [fol. 504] ing on the record, from which the presumption of the requisite qualification may arise has in all cases, we believe, been deemed sufficient. Some of the cases hold that if the petition alleges the necessary qualification of the signers, the record sufficiently shows that fact, not because of the allegation alone at least—for it proves nothing—but because it will be presumed that the facts alleged were duly proven. Since in this state the petition need not contain that allegation, no good reason appears why the same presumption that the necessary facts were duly proven, should not exist. Other cases hold that if the record discloses an express determination of the existence of the necessary facts, that is sufficient, which, again, is based on the presumption that the determination is correct. We have, in this case, simply extended the principle of presumption one step further back, by also applying it to the fact of the determination itself, and this, we believe, is more in harmony with general principles applicable to similar cases.

6. Section 2988, W. C. S. 1920, provides that with the petition shall be filed a list of the property owners through whose land the road runs, together with the post-office address of such owners. A list purporting to give all the names of such owners was actually filed, being contained on the back of the petition. But it is claimed that the list is not complete and left out three parties, the Wyoming Development Co., F. E. Martin and H. L. Meadows. We think, however, as the Illinois court of Appeals in the case of Caldwell v. Moffatt, 215 Ill. App. 583, that while such an omission is an irregularity, it cannot be held to be jurisdictional. It might be juris-

dictional as to parties not named, but plaintiff who was named should not have the power to overthrow a proceeding so generally beneficial as the laying out of a public road. Bockoven v. Board of [fol. 505] Supervisors, 13 S. D. 317, 321 and cases cited.

7. Section 2990 provides that the chairman of a board of county commissoners may appoint a viewer, if, in his judgment, an emergency exists. It is claimed that in this case the chairman of the board made the appointment but that no emergency has been shown to exist. But the statute evidently leaves the determination of the fact to his judgment, and assuming that he made the appointment herein, in the fact of making it was necessarily involved the determination of the existence of such emergency, and the formal entry, by him, upon the records could not, in the absence of a statutory requirement, be regarded as jurisdictional. We have not been cited to any case holding it to be so.

8. It is claimed that the report of the viewer is defective because it did not, as required by statute, state whether the proposed road was practical, nor "the probable expense of the same," including damages to the property owners along the line thereof," and the benefits thereto. The viewer reported that he recommended that the road be established as was called for by the petition, that it would be a benefit to a great many people and should be established; that three bridges should be constructed and some work done on the hills, and that the expense of the road would be about $5,000.00. We think that from these statements may be readily gathered the fact that in his opinion the road was practicable. It was not necessary to use the identical language of the statute. Whether the statute contemplates that the separate items of damages and benefits to each property holder along the line of the road shall be reported, may at least be questioned, since the specific damages are to be later fixed by appraisers. In any event, whatever defect, if any, exists in this [fol. 506] respect could not well, in view of what we have heretofore said as to the importance of the viewer and his report in the scheme of establishment of highways in this state, be considered other than an irregularity, and such defect could not, therefore, be considered in this action.

9. Counsel for plaintiff contend that the public road law of this state is unconstitutional as denying due process of law, for the alleged reason that section 3002, W. C. S. 1920 fails to require notice to be given by the appraisers of their meeting to fix the amount of damages. It is not necessary, in order to constitute due process of law, that a property owner be notified of every step of the proceedings, provided that at some state thereof he have full opportunity to present his case to an impartial tribunal. 20 C. J. 929 and cases cited. State ex rel. v. District Court, 90 Minn. 457; Bass v. City of Casper, 28 Wyo. 387, 435; Page & Jones, Tax. by Assessment, Sec. 125. Among several admissible modes is that of causing the amount to be assessed by viewers or appraisers, subject to an appeal to a court carrying with it a right to have the matter determined upon

a full trial. And where this mode is adopted due process does not require that a hearing before the viewers, or appraisers, be afforded, but is satisfied by the full hearing that may be obtained by exercising the right to appeal. Bragg v. Weaver, 251 U. S. 57, 40 Sup. Ct. 62 and cases cited; People v. Adirondack R. Co., 160 N. Y. 225, 241, 54 N. E. 689; Fulton v. Dover, 8 Houst. (Del.) 78, 6 Atl. 633, 12 Atl. 394, 31 Atl. 976; City of Atlanta v. Central R. & B. Co., 53 Ga. 120; Page & Jones, supra, Sec. 134, and cases cited. We think that under our statute this principle is fully satisfied. In fact, the only substantial difference between this case and Bragg v. Weaver, supra, is the time of the notice given. The board of county com- [fol. 507] missioners must appoint a day, not less than thirty days thereafter, on or before which day all objections to the establishment of the road and claims for damages are to be filed. Sec. 2996, W. C. S. 1920. Notice thereof must be published for three successive weeks in the official newspaper of the county, and a copy of the notice must be mailed by registry mail to all persons owning lands or claiming any interest in any lands over and across which the proposed road is located. Sec. 2979. Though by the same section, the published notice alone is declared to be a sufficient notice, still the provisions for mailing a copy is a further protection to the land owner so as to give him opportunity to appear and protect his rights. All objections or claims for damages must be filed on or before noon of the day fixed. Sec. 2998. If claims for damages are filed, the board, at a regular or special meeting, must appoint three suitable and disinterested electors of the county as appraisers to view the ground, on a day fixed by the board. All meetings of the board are public, (Sec. 1413) and their proceedings must be published in a newspaper of the county within 48 hours, or immediately thereafter, and if practicable, notice must also be published in the official newspaper of said board of every regular or special meeting of the board. Sec. 1424. The appraisers must be notified of their appointment by the county clerk, and are furnished with a list of claimants for damages and the amount of the claims, and are directed when to file their report. Sec. 3001. The appraisers must meet within ten days after receiving notice of their appointment; that is to say, on the date set by the board; must take an oath to faithfully and impartially discharge their duties; may, if convenient, give further notice of their meeting to property holders or their agents and hear evidence. Sec. 3002. At the next meeting [fol. 508] of the board—which, no doubt, is intended to be the next regular meeting fixed by law the board may hear testimony, consider petitions for and remonstrances against the establishment of the road, may establish it, or refuse to do so, and "may increase or diminish the damages allowed by the appraisers." Sec. 3003. Any claimant of damages may appeal from the final decision of the board of county commissioners to the district court of the county wherein the land lies, by giving notice of such appeal to the county clerk within thirty days after such decision by said board, and by giving a bond in the sum of $50.00 to cover costs. That being done

the county clerk must, within ten days, file in said court a transcript of the papers and the proceedings of the board in relation to such damages claimed. The damages are then to be ascertained in said court in the same manner as damages in a civil action, which includes the right to a trial by a jury. Sections 3008-3010. We do not think the contention of counsel for plaintiff is well founded, when they argue that under these provisions the claim for damages might be finally determined by the board of county commissioners and that the thirty days might elapse without such claimant having any knowledge of the proceedings. If that were to happen, it would be due, we think, solely to the negligence of a claimant, except in case of unavoidable casualty from which relief might be obtained in equity. When the notice required by law is duly given, the sufficiency of which to convey knowledge to parties interested and the giving of which in the case at bar is not questioned, it satisfied the requirements of due process and it becomes the duty of a claimant for damages to take cognizance of all acts or steps thereafter taken in the proceedings. 20 C. J. 931 and cases cited. 12 C. J. 1229; State ex rel. v. District Court, 90 Minn. 457; In re Bump, 152 Cal. 274, 92 Pac. 643; Jones v. Mould, 151 Ia. [fol. 509] 599, 132 N. W. 45; Handley v. Graham, 187 Ky. 316, 219 S. W. 417, 420; Henderson v. Mut. Fertilizer Co., 150 Ga. 465; Bonney v. McClelland, 235 Ill. 259, 85 N. E. 242; Staunton Coal Co. v. Monk, 197 Ill. 369 and cases cited. Nor, do we think, is this difficult under the provisions of our statute. All acts done are done openly, public notice is provided to be given of all steps taken by the board of county commissioners, and reasonable inquiry, should the public notice not come to the knowledge of claimants, would fully inform them of just what has been done, and gives them, we think, that reasonable opportunity for a full and complete and impartial hearing required by the constitution to constitute due process of law.

10. The notice given in the case at bar provided that all objections or claims for damages "must be filed in writing with the county clerk of said county before noon on the 7th day of June, A. D. 1917, or such road will be established without reference to such objections or claims for damages." The wording is in accordance with Sec. 2997, W. C. S. 1920. Section 2998 provides that: "If no objections or claims for damages are filed on or before noon of the day fixed for filing the same, they shall be disregarded and not considered, and shall be deemed to have been waived and barred." Plaintiff filed objections, including a rather indefinite claim for damages, on June 30th, 1917. No reason has been alleged or shown why the objection and claim was not filed within the time fixed in the notice. A document is incorporated in the record which does not disclose when it was executed, but it does show that it was not filed until July 2, 1917, and we cannot, therefore, presume that it was executed prior to or on June 7th, 1917, and no claim is, in fact, made, that it was executed on or prior to the last mentioned date. It purports to be executed by the "Board of County Commissioners of

[fol. 510] Platte County, Wyoming, by A. E. Hoffman, its chairman," and recites that "it is hereby stipulated and agreed by and between the board of county commissioners of Platte County, Wyoming, and The North Laramie Land Company, that the said North Laramie Land Company be and they are hereby granted until the third day of July, A. D. 1917, to file their objections and claims for damages on account of county Road No. 83 traversing said Company's land." The record does not disclose, except by the recitals of the foregoing stipulation, whether the board or only its chairman executed it, but for the purposes of this case, we may treat it as though executed by the board. Nor is it shown that any action was taken on the objection and claim filed, except only that it is made to appear by some affidavits filed in connection with a motion to dissolve the temporary injunction herein that said board of county commissioners considered the subject and decided that the plaintiff was not entitled to any damages. Plaintiff now claims that the board had a right to fix the time for claiming damages, and that by the stipulation mentioned, it fixed the time as July 3rd, 1917. But by the time fixed, as mentioned in Section 2998, is undoubtedly meant the time originally fixed by the board and published in the notice given. It could not reasonably have been intended by law that the board should fix, or be able to fix, a separate date for each claimant, and thus extend favors to one that might be denied to another. If an application for an extension of time or an order extending the time had been made before the date fixed in the notice had expired, and before the provision for waiver provided by law had come into operation, then the question might arise as to whether or not the board has inherent power to grant extensions, but where no appearance whatever has been made before the time fixed, and the provision of law that all claims of damages not filed in time shall not be [fol. 511] considered and shall be deemed waived, has definitely come into operation, then we cannot see how the board can, by direct violation of the law, bring to life a claim that is by statute declared to be barred. Davison v. Campbell, 28 Ind. App. 688, 63 N. E. 779. Counsel for plaintiff, however, argue that the statute cannot impose upon an owner whose property is sought to be taken in eminent domain proceedings, a condition that, in order to be entitled to compensation, he must file a claim therefor. They cite in support of that contention the cases of Board of Levee Commr's v. [illegible], 65 Miss. 335, 3 So. 568; Kincaid v. Seattle, 74 Wash. 617, 134 Pac. 504, 135 Pac. 820 and Kime v. Cass County, 71 Nebr. 677, 101 N. W. 2. The case from Mississippi and that from Washington are not controlling, because decided under a constitution providing that before private property may be taken for public use, compensation must first be made. No such constitutional provision is found in our state. Sec. 33, Article 1 of the Wyoming Constitution provides that "private property shall not be taken or damaged for public or private use without just compensation." If damages are legally recovered or allowed in highway proceedings, they are payable absolutely, and the county and its taxpayers are responsible

therefor, so that ample provision exists under our law for ultimate payment. And that appears to satisfy the constitutional provision quoted. The Nebraska case cited decides, it is true, to the contrary, under a constitutional provision identical with ours. But from our investigation the court in that state seems to stand alone on that proposition, and the contrary has been decided in other jurisdictions under like constitutional provisions, or even under provisions like that of Mississippi and Washington. Wabash etc. R. Co. v. Defiance, 52 O. S. 262, 305; 40 N. E. 89 and other Ohio cases cited; Brookville etc. Co. v. Butler, 91 Ind. 134, 46 A. S. R. 480; Kansas [fols. 512 & 513] City v. Duncan, 135 Mo. 571, 37 S. W. 513; Petit v. McClanahan (Mo.) 247 S. W. 918; Sala v. Pasadena, 162 Cal. 714, 124 Pac. 531; Potter v. Ames, 43 Cal. 75; Taylor v. Drainage District, 167, Ia. 42, 148 N. W. 1040; L. R. A. 1916 B. 1193; State v. Messenger, 27 Minn. 119, 6 N. W. 457; Simms v. R. R. Co., 59 Tenn. 621; Bast v. Cabbarrus Co., 152 N. C. 531, 67 S. E. 1066; Wabash etc. R. Co. v. Defiance, 167 U. S. 88, 17 Sup. Ct. 748, 754; 20 C. J. 871, 872. Nichols, Eminent Domain, Sec. 344. Public roads, particularly in a new state like Wyoming, are important. At the same time the board is entitled to know the amount of the claims made for and on account thereof, so that it may determine whether or not to make the expense of establishment of a road a burden upon the taxpayers of the county, and we do not feel justified in holding a law requiring the presentment of a claim for damages within a given time as unconstitutional when, as we believe is true here, reasonable provision has been made and reasonable opportunity has been given, after notice, for the landowner to do so. If circumstances should arise that should in equity relieve a land owner from his default, a different question would arise, but no such circumstances are alleged or shown or claimed herein.

The further point urged that the appraisers did not meet at the time fixed by the board becomes, in view of the failure of the plaintiff to file its claim in time, wholly immaterial as to the latter.

The judgment of the lower court should accordingly be affirmed and it is so ordered.

Affirmed.

Potter, Ch. J., and Kimball, J., concur.

[fol. 514] IN THE SUPREME COURT OF WYOMING

MANDATE OF AFFIRMANCE

To the Honorable the District Court of the County of Platte, Greeting:

Whereas North Laramie Land Company, a Corporation, on the 24th day of January, A. D. 1919, filed a petition in error in the Supreme Court of the State of Wyoming to obtain the reversal of a judgment rendered by you on the 9th day of May, A. D. 1918, in a cause

pending before you wherein North Laramie Land Company, a Corporation, was plaintiff and Albert E. Hoffman, Ulyssis S. Jones, George S. Martin, individually and as constituting the Board of County Commissioners of Platte County, Wyoming, and the Board of County Commissioners of Platte County, Wyoming, were defendants; and

Whereas, The following proceedings were had and entered in the Supreme Court in said cause, on the 18th day of October, A. D. 1923, to-wit:

"This cause having been heretofore taken under advisement, the court being now fully advised in the premises, doth say and find that there is no reversible error in the record of the proceedings of the district court of Platte County in this cause. It is therefore ordered and adjudged, for the reasons stated in the opinion herein this day delivered and filed, that the judgment of said district court herein be, and the same is hereby, affirmed. It is further ordered that the costs of this proceeding in error be taxed against the plaintiff in error, and the court doth certify that there was reasonable cause for the proceeding in error."

Now, therefore, you are commanded without delay to carry into execution and effect the judgment so as aforesaid rendered by you, in the manner provided by law, the petition in error herein to the contrary notwithstanding.

Witness the Honorable Charles N. Potter, Chief Justice of said Supreme Court, and the Seal thereof, at Cheyenne, this 23rd day of November, A. D. 1923.

Fred S. Fobes, Clerk. (Seal of Supreme Court, State of Wyoming.)

Costs in Supreme Court taxed against plaintiff in error as follows:

Docket Fees—Paid by Plaintiff in Error	$29.25
Briefs of Defendants in Error—120 folios at 30¢ for 4 copies.	36.00
Total	$65.25

[fol. 515] SUPREME COURT OF WYOMING

CLERK'S CERTIFICATE

I, Fred S. Fobes, clerk of said court, do hereby certify that the foregoing pages, numbered from 1 to 514, inclusive, are a true, full and complete transcript of the record and proceedings, in the case of North Laramie Land Company, a Corporation, Plaintiff in Error, vs. Albert E. Hoffman, Ulyssis S. Jones, George S. Martin, individually, and as constituting the Board of County Commissioners of Platte County, Wyoming, and the Board of County Commissioners of Platte

County, Wyoming, Defendants in Error, and also of the opinions of the court rendered therein, as the same now appear on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office, in Cheyenne, Wyoming, this February 27, 1924.

Fred S. Fobes, Clerk Supreme Court of Wyoming. (Seal of the Supreme Court of the State of Wyoming.)

[fol. 516] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS

Now comes North Laramie Land Company, Plaintiff in Error, by Roderick N. Matson, Max Pam and Harry Boyd Hurd, its Attorneys and Solicitors, and respectfully submits and shows that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Wyoming in the above entitled matter and cause, there is manifest error in this, to-wit:

1. The said Court erred in affirming the judgment of the District Court of Platte County, in the State of Wyoming.

2. The said Court erred in affirming the judgment of said District Court in that the laws and statutes of the State of Wyoming with re-
[fol. 517] spect to the location of public roads and the taking of land therefor, and particularly Sections 2516, 2518, 2520, 2521, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2536, 2537 and 2538 of Chapter 168 of the Wyoming Compiled Statutes of 1910, Reprinted in 1917, and each of said Sections, are repugnant to the Fourteenth Amendment to the Constitution of the United States of America.

3. The said Court erred in affirming the judgment of said District Court in that the statutes of the State of Wyoming with respect to the location of public roads and the taking of land therefor, and particularly the statutes and laws hereinabove expressly referred to, are repugnant to the Fourteenth Amendment to the Constitution of the United States of America, the effect of said statutes being to deprive the owners of the land so taken of their property without due process of law.

4. The said Court erred in holding and deciding in favor of the validity of said statutes of the State of Wyoming, notwithstanding their repugnancy to the Constitution of the United States of America and particularly to the Fourteenth Amendment thereto.

5. The said Court erred in refusing to hold and decide that the procedure prescribed by said statutes of the State of Wyoming for the

location of public roads and the taking of land therefor amounted to a denial of due process of law within the meaning of the Fourteenth Amendment to the Constitution of the United States of America.

[fol. 518] 6. The said Court erred in refusing to hold that said statutes were repugnant to the Fourteenth Amendment to the Constitution of the United States for the following reasons, and each of them, to-wit:

(a) That said statutes permit the taking of private property for public use without compensation;

(b) That said statutes make no provision whatever for just compensation to the owners of the land taken for the value thereof;

(c) That said statutes permit the set-off of benefits to land not taken in determining the compensation to be paid to the owners of the land taken;

(d) That said statutes work a denial of due process of law in empowering the Board of County Commissioners therein mentioned to fix the compensation payable to the owners of the land taken;

(e) That due process of law is denied by Sections 2524, 2525 and 2526 of said statutes (otherwise known as Sections 12, 13 and 14 of Chapter LXIX of the laws of 1895), wherein it is provided that claims for damages by reason of the location of a public road shall be filed not later than a day appointed by the Board of County Commissioners and that no claims for damages filed after the day so appointed shall be considered or entertained, and that the only notice to which the owners of the land are entitled by said statutes is notice either by publication in a weekly newspaper published in the county or by posting upon the land, either notice being declared by said statutes to be sufficient;

(f) That due process of law is denied by Section 2531 (otherwise known as Section 19 of Chapter LXIX of the Laws of 1895), wherein the Board of County Commissioners therein referred to is permitted but not required to hear testimony with respect to petitions for damages, and is permitted but not required to consider any such evidence, or any matter or thing contained in any petition for damages in arriving at its judgment with respect to the compensation to be paid for land taken;

[fol. 519] (g) That due process of law is denied by said statutes, and particularly by Sections 2536 thereof (otherwise known as Section 24 of Chapter LXIX of the Laws of 1895), wherein an appeal is allowed to applicants for damages on condition that notice of such appeal shall be given to the County Clerk within thirty days after the decision of the Board of the County Commissioners, or such claim shall be deemed to have been abandoned, without providing that notice of the decision of the Board of County Commissioners shall be given to the claimant;

(h) That due process of law is denied to the owners of land taken for public roads thereunder by each and every provision of said

statutes and each and every of the proceedings therein prescribed and provided for.

7. For each of the reasons assigned in the next preceding assignment the said Court erred in affirming the judgment of said District Court.

8. The said Court erred in affirming the judgment of said District Court in that all of the acts and proceedings of the Defendants in Error, individually and as the Board of County Commissioners against the Plaintiff in Error and its property, were unlawful, void and in violation of the Fourteenth Amendment to the Constitution of the United States of America and constituted a taking of the property of the Plaintiff in Error without compensation and without due process of law.

9. The said Court erred in holding and deciding that the statutes of the State of Wyoming hereinabove referred to were valid and legal [fol. 520] and not in violation of the Constitution of the United States, and particularly of the Fourteenth Amendment thereto.

10. The said Court erred in holding and deciding that the Plaintiff in Error was not entitled to relief in equity against the unlawful taking and confiscation of its property threatened and intended by the Defendants in Error under pretense of authority derived from said statutes of the State of Wyoming, all and every section of which were and are in contravention of the Constitution of the United States of America, and particularly of the Fourteenth Amendment thereto.

11. The said Court erred in refusing to hold and decide that said proceeding in said District Court was a direct attack as distinguished from a collateral attack upon the action of said Defendants in Error complained of.

12. The said Court erred in refusing to hold and decide that under the statutes of the State of Wyoming above referred to the Board of County Commissioners has no power to establish or alter any county road without any petition previously filed, preliminary proceedings taken previous to the giving of notice, and fixing the time therefor.

13. The said Court erred in holding and deciding that the document introduced in evidence and designated in the opinion of said Court as the "waiver," being a certain document reading:

[fol. 521] "We, the undersigned, being all the owners of land through which the following proposed road will pass, in consideration of the Board of County Commissioners of Platte County, declaring the said a county road, do hereby covenant and agree with the said Board of the County Commissioners of said Platte County, Wyoming, that we will each and all of us waive any and all claims to damages for the land taken for such road, and for moving fences and building fences, and hereby donate to said county a right of way for such road:"

and describing the proposed road and bearing the signatures of ten (10) persons among whom the Plaintiff in Error was not included, was in substance a sufficient petition for the location of a public road in compliance with said statutes of the State of Wyoming, and particularly Section 2516 thereof (otherwise known as Section 4 of Chapter LXIX of the laws of 1895).

14. The said Court erred in holding and deciding that it was not necessary that the record and proceedings of the Defendants in Error, as the Board of the County Commissioners, should show full and complete compliance with all the requirements of said statutes with respect to the taking of land for public roads.

15. The said Court erred in holding and deciding that with respect to the proceedings prescribed by said statutes for the taking of land for public roads, compliance with said statutes by the Board of the County Commissioners should be presumed when not affirmatively appearing.

16. The said Court erred in refusing to hold and decide that in proceedings had by the Board of the County Commissioners under [fol. 522] said statutes with respect to the taking of land for public roads all of the requirements of said statutes with respect to the procedure therein prescribed must affirmatively appear in order to validate and effectuate any such proceedings.

16. The said Court erred in holding and deciding that it was not necessary that the statutory qualifications of the signers upon a petition under said statutes for the taking of land for public roads should affirmatively appear from the petition.

17. The said Court erred in holding and deciding that the petition in question was effective and sufficient even though it omitted the names of three (3) persons who were property owners of land through which the proposed road was to run.

18. The said Court erred in holding and deciding that under and pursuant to said statutes it was competent for the Chairman of the Board of County Commissioners to appoint himself to be the viewer therein provided for, notwithstanding there was nothing in the record and proceedings had by the Board of County Commissioners tending to show that an emergency existed.

19. The said Court erred in holding and deciding that the report of the viewer made to said Board of County Commissioners with respect to the proposed road was a substantial compliance with said statutes.

[fol. 523] 20. The said Court erred in refusing to hold and decide that the Public Road Law of Wyoming violated the Constitution of the United States of America in that it denied due process of law in failing to require notice to be given by the appraisers of their meeting to fix the amount of damages.

21. The said Court erred in holding and deciding that the notice provided for in said Road Law to be given by the Board of County Commissioners of their decisions with respect to claims for damages is constitutional and not a denial of due process of law within the meaning of the Fourteenth Amendment to the Constitution of the United States of America.

22. The said Court erred in refusing to hold and decide that the stipulation entered into by the Chairman of the Board of County Commissioners, whereby the Plaintiff in Error was granted an extension of time within which to file its objections and claim for damages, was valid and sufficient and effectively extended the time for the filing of the claim of the Plaintiff in Error, notwithstanding the provisions of the statute in that regard.

23. The said Court erred in holding and deciding that the following evidence introduced by defendants in error was competent and admissible, to-wit:

"T. A. SHAW, produced as a witness on behalf of the defendant, was duly sworn to testify the truth, the whole truth, and nothing but the truth, and testified as follows:

Direct examination by Mr. Haggard:

Q. State your name.
A. T. A. Shaw.
[fol. 524] Q. Where do you reside?
A. In the northwest end of this County.
Q. How long have you resided there?
A. About 40 years.
Q. I will hand you this instrument purporting to be a petition for the establishment of a highway and a waiver of any claims for damages, and an agreement conveying said road on behalf of the signers thereof, which purports to have been filed on April 4, 1917; I ask you if you have ever seen that instrument before?

By Mr. Cramer: I object. If it is merely a question of identifying the signatures, we don't in any of the pleadings raise the question of the identity of the persons whose names may be on that document or any other. The second objection is that the Board of County Commissioners, acting in proceedings of this character, act as a court of limited jurisdiction and can only speak by their record, and they cannot correct defects in the record by parole testimony.

By Mr. Haggard: This is not an effort to correct any defects; it is merely an effort to explain the record so that the court may pass upon the condition of that record; nor is it clear that the two documents are to be considered as one. The defendants claim they are one document, and it is the purpose of this testimony to show that the signatures as they appear on there were signatures to the entire document consisting of two pages.

By the Court: I will hear this testimony, and will hear the entire argument at the conclusion as to the admissability of the testimony, and, if it is so stipulated, this testimony on this point may all be considered as having been objected to, and the testimony is received subject to the objection, and the court will reserve its right to rule on the objection hereafter.

A. Yes sir, I recognize this as a petition I circulated.
Q. At the time you first saw that petition were these signatures upon it?
A. No sir.
Q. Do you know who circulated this petition?
A. Yes sir.

By Mr. Cramer: I will have to object to that as hearsay testimony.
By the Court: He may state, if he knows.

Q. Who did?
A. I did.
Q. At the time you circulated this petition were these two papers fastened together in the same condition they are now?
A. Yes sir.
Q. What, if any, statement did you make to these persons whose signatures you procured to that instrument, as to its character, when you solicited their subscription?

By Mr. Cramer: That is objected to, as we are not bound by any conversation he may have had.
By the Court: It may be received subject to the objection.

[fol. 525] A. If I understand the question, I presented this to the people and asked them if they were willing to sign this in regard to opening up a road in this part of the County, and they all said they was willing to have this road opened up.
Q. And in response to that request of yours they did so sign the paper?
A. Yes sir.

By Mr. Cramer: I am not waiving my right to make these objections, if I cross-examine.

Cross-examination by Mr. Cramer.

Q. To the petition which has been handed you there is attached a typewritten document with various pencil and one pen signatures; who prepared that document?
A. Weel, sir, I couldn't answer that question. It was prepared in the County Commissioners' Office, I suppose, by the County Clerk.
Q. How did the matter come to your attention?
A. I don't know as I understand you.
Q. You circulated this, you say?
A. Yes sir.
Q. Who gave it to you to circulate?
A. Mr. Hoffman.

Q. Then you took the documents to the different people who you say signed their names here?
A. Yes sir.
Q. Your name is Shaw?
A. Yes sir.
Q. Where do you live?
A. Out here about 35 miles.
Q. How near the road?
A. Which road?
Q. We are only talking about one road—the proposed road.
A. I live about 15 miles from where this road intersects the road I travel.
Q. How did Mr. Hoffman happen to give this to you?
A. He wanted me to circulate it so as to get the names of the people on it to show whether they wanted the road or not.
Q. Isn't there anybody who lives closer, and is more interested in the road, than you?
A. Nobody is much more interested in the road than I am, but there is people lives right on this road.
Q. Why didn't you sign this?
A. I did sign it, if I am not mistaken.
Q. If you signed this, will you please point out your name.
A. I will take that part of it back. I will tell you why—

By Mr. Cramer: I object to that as immaterial as to why he didn't sign t. It purports on its face to be signed by a sufficient number of electors.
By the Court: He may answer.

A. (continued). This road connects with the road I travel as a County road, and it has been for a good many years, and this road we are trying to get opened now we have been trying to get opened for about eight or ten years. Probably I didn't sign the petition, but I am interested in the road just the same. I don't know as it was necessary for me to sign the petition because I had my part of the road I traveled to where it intersects this road.
Q. Where does D. F. Romine live?
A. North of here about five miles.
Q. Are these various persons who signed this here now?
[fol. 526] A. Part of them are.
Q. Part of them are?
A. I don't know but what all of them are.
Q. I notice there is only one man, John Mullin, signed the printed copy of the petiton; how did that happen?
A. If I can understand this right, Mr. Mullin signed the petition with the calculation or expectation of getting a little damages. He might have thought he was signing the petition the same as the rest of them.
Q. Wasn't it presented to John Mullin?
A. Yes sir.
Q. You notice he is the only man who signed the second paper in your hand?

A. Yes sir.

Q. Why is that?

A. As I say, he signed that paper, with my understanding that he expected to get a little damage out of this.

Q. That is what he said when you talked to him?

A. Yes sir.

Q. What did he say?

A. I don't know whether I remember the conversation exactly, but he signed this petition the same as the rest of them, but maybe he didn't sign with the rest of them, but he signed with the calculation of having this road go through.

Q. I understand that was the purpose. I notice that the second petition, the printed petition, has a number of lines for signatures, and the first document doesn't have any blank lines for signatures. You know that in the ordinary course of events, where a document is to be signed and is considered to be a whole document, that they always sign on the last page, and John Mullin is the only one who signed on the last page, and every other man signed on the first page; why is that?

A. I don't know as I can expla. i that.

Q. You are the man who took it around; didn't you talk with them about it?

A. Yes sir.

Q. What did they say and what did you say?

A. I will repeat all the conversation I remember. I went to Mr. Mullin with this petition ans said: Mullin, I have another petition for this road to go through" and he said: "All right. Do you think you can get it through this time?" and I said: "I think we have County Commissioners now who will be able to put it through." If there was any more conversation, I can't remember.

Q. Do you know anything you said to the other people except Mullin?

A. Yes sir.

Q. What did you say?

A. I said I had a petition, and asked them if they wanted to sign it, to open a road, and I explained the road, and they said "Yes, we want the road opened up and are willing to have it opened up" Whether there was any more conversation between me and them I don't know.

Q. When did you see the different parties?

A. I can't remember the time exactly.

Q. When did you receive this document?

A. Sometime in September, I think; I wouldn't say what time because I don't remember.

Q. Was it in the fall?

A. If it was in September, it must have been in the fall.

Q. But you didn't remember whether it was in September.

A. I don't remember whether it was September or October.

Q. At any rate it was in the fall?

A. Yes, sometime.

Q. Over what period of time did you work in getting these signatures?

[fol. 527] A. It wasn't over two days.

Q. It wasn't filed until April.

A. Perhaps not.

Q. It shows on its face that it wasn't filed until April, doesn't it?

A. Yes.

Q. Who filed it?

A. I couldn't tell you. I brought it back and turned it over to the Commissioners.

Q. When?

A. I don't remember.

Q. Who did you turn it over to?

A. I don't know that either. I took it to the County Commissioners' office and turned it over to the County Commissioners or the County Clerk.

Q. Who have you talked with before you came here?

A. I might have talked with a lot of people.

Q. Have you talked with any lawyers?

A. No sir.

Q. You were put on the stand without a single conversation about what you were going to say?

A. No sir.

Q. You mean that you didn't have any talk with Mr. Paige or Mr. Haggard?

A. I didn't understand your question.

Q. Are you going to take that back?

A. Yes sir. I thought you meant who did I talk with before I put this petition in the office.

Q. No, I mean before you came here to testify, what lawyers did you talk with?

A. Those two gentlemen right there (indicating Mr. Paige and Mr. Haggard).

Q. What did you say and what did they say?

By Mr. Haggard: I object to that.

By the Court: Sustained.

Q. These different men, from time to time when you showed this document to them; did they read the whole thing?

A. They were supposed to and I think they did. They looked it over and I guess they read it.

Q. You don't know?

A. No, I couldn't tell whether they read it or not.

Q. You didn't stand there and watch them?

A. I did.

Q. At least, they used their eyes and went through the motions?

A. They seemd to be reading it, but maybe they were like I am and can't read.

Q. Can't you read at all?

A. Sometimes when I have got my glasses.

Q. It is a question of eye-sight then?

A. Yes sir, I can read. These people took the paper and read it over, I am satisfied.

Q. One was a petition for a road and the other was a waiver of damages?

By Mr. Haggard: Objected to as calling for a conclusion as to whether they were two separate instruments or one.

Q. There were two pages and one was a printed form of petition for a road and the other was a specially prepared page waiving damages and donating the road; now each time each one of those men read that document, those men who signed, were they owners of the [fol. 528] land along the road, or were they men who could claim damages?

A. Do you mean deeded land, or just filed on?

Q. I don't care whether they can claim on deeded land or Carey Act, they could claim damages.

A. I am not well enough posted to know.

Q. But you knew that you couldn't claim damages, didn't you?

A. I didn't try.

Q. I didn't ask you whether you tried; please answer the question. You knew that you couldn't claim damages? You knew that you owned no land along the road and couldn't put in a claim for damages because of damages to your land, didn't you?

A. On this certain petition?

Q. Yes.

A. I am not owning any land on this petition.

Q. But you could have signed the petition?

A. I suppose I could.

Q. But you didn't?

A. I didn't.

Q. And these other people, instead of signing the second page, signed on the first page which relates only to waiver of damages and donation of land?

A. As near as I can see.

Q. You see it, don't you?

A. I think the paper——

Q. No thinking, you must answer my question (Former question repeated by the reporter as follows:)

And these people, instead of signing the second page, signed on the first page which relates only to waiver of damages and the donation of land?

That is a fact now, isn't it?

A. Yes sir, it appears that way the way it was signed.

Q. Have you been told that that is the turning point in this case as to whether those two documents can be considered together as a petition?

By Mr. Haggard: I object to that question.

By the Court: He may answer.

A. I am not going to answer that question unless I understand it.

Q. (Question repeated.)
A. Yes sir.

Redirect examination by Mr. Haggard:

Q. You offered to explain the appearance of those signatures on the first page instead of the last; can you explain how that occurred.
A. Yes sir.
Q. Please explain.
A. When this petition was given to me by the County Commissioners he says: "There is a petition and waiver together." If I remember right, he said: "When they sign this waiver, that means that people expecting damages to sign the petition that they want the road without damages." I don't think part of these people understood the difference and probably signed this petition expecting to sign the petition and not the waiver.

By Mr. Cramer: That is not within the general objection I object to that as involving a conclusion as to what probably went through the mind of someone else.
By the Court: Sustained.
[fol. 529] By Mr. Cramer: I move to strike it out.
By the Court: Sustained.

Recross-examination by Mr. Cramer:

Q. After Mr. Hoffman had told you about the difference between the two documents, do you mean to say that you presented it to the various farmers and didn't tell them what Mr. Hoffman said?
A. I did.
Q. You told them?
A. Yes sir, but as I said before they didn't understand it.

By Mr. Cramer: I object to that and move to strike it out, what they understood.
By the Court: Sustained.

At this time the taking of the testimony was adjourned until two o'clock P. M., at which time the court reconvened, and Mr. Shaw was recalled for further direct examination by Mr. Haggard.

T. A. SHAW, recalled as a witness on behalf of the defendants, was duly cautioned that he was stll under oath and testified as follows:

Direct examination by Mr. Haggard:

Q. I call your attention again to this petition with reference to which you testified this morning, and which has been marked for identification No. 1; you stated you circulated the petition and procured the signatures; did you procure them all?
A. No sir.
Q. Do you know who procured the others?
A. My son.

Q. Do you know which ones you procured.
A. Yes, I think I go- about seven or eight signatures.
Q. At least seven?
A. I think so.

By Mr. Cramer: I desire to make a motion to strike out the testimony of the witness on the general ground as stated.
By the Court: The same ruling. Ruling will be reserved.

JAMES A. SHAW, produced as a witness on behalf of the defendants, was duly sworn to testify the truth, the whole truth, and nothing but the ruth and testified as follows:

Direct examination by Mr. Haggard:

Q. I hand you a paper marked No. 1 for identification; do you recognize that?
A. Yes sir.

By Mr. Cramer: The same objection.
By the Court: The same ruling.

Q. Did you procure any signatures to that instrument?
A. Four, I think.
Q. Indicate which four.
[fol. 530] A. Hall, Cook, Hood and Spaeth.
Q. At the time you procured the signatures of those gentlemen, did you make a statement to them as to the character of this petition, what it was?

By Mr. Cramer: I object to any conversations made in the absence of the Plaintiff here, and in the second place the question itself involves a conclusion in the answer.
By the Court: He may answer.

A. I merely said: "Do you want to sign the petition for this new road?"
Q. What, if any, replies did they make to that?
A. They said they were willing.
Q. What, if anything, did they do?
A. They signed it.

Cross-examination by Mr. Cramer:

Q. In what condition did you find this document at the time it was delivered to you?
A. I found it in an envelope.
Q. Whose names were on there?
A. I can't tell you for sure.
Q. Who gave it to you?
A. My father.
Q. Was John Mullin's name on it?
A. Yes, it was.

Q. Was it signed on one or both; you see how his name is signed to both; was it signed then to one or both?

A. I don't remember.

Q. When was it this document was given to you, and you procured the signatures you say you procured; in point of time, when was it?

A. In the spring, the later part of the winter and early in the spring.

Q. What year?

A. I don't know.

Q. You don't know that?

A. No sir, I don't.

Q. Do you remember what conversation you had with Cook and those other gentlemen?

A. I only asked them if they wanted to sign a petition for the new road. They all knew where it was and I had no occasion to explain where it was, and the*h* all said they would and they took it and signed it.

Q. That is your conclusion that they didn't have occasion to ask what it was, that they all knew?

A. They didn't ask me any questions.

Q. Did they ask you where to sign?

A. No, they didn't.

Q. Here are two documents and one says "Name" and Post office" and here is John Mullin's name signed on the second page of the document, and they didn't ask you what they were signing or a thing, but all signed in the same place?

A. It looks like it.

Q. Didn't they?

A. Yes, they did, I guess.

Q. Don't you know?

A. Yes.

Q. There is no doubt about it in your mind?

A. None whatever.

[fol. 531] Q. How much time did you spend with Mr. Cook at the time you obtained his signature?

A. It was in his barber shop and it was about 15 minutes.

Q. Where in his barber shop?

A. At Dwyer.

Q. How long has he lived at Dwyer?

A. I don't know.

Q. Did you know him before that?

A. I met him the first time that day.

Q. As to whether it was Mr. Cook then you don't know?

A. I do not.

Q. You merely walked into his barber shop then and did not have any conversation, but he merely signed the petition and you walked out; that is all you did?

A. These four were all there.

Q. This was the result of a pre-arrangement, was it?

A. No.

Q. You accidently found them there?
A. Yes sir, I went to Dwyer for that purpose.
Q. How many of them own real estate?
A. They all have homesteads.
Q. Mr. Cook included?
A. Yes sir.
Q. How long a time were you in this barber shop?
A. Possibly 15 or 20 minutes.
Q. And all you said was "Here is a petition, sign it," and that is all that was said?
A. I said: "Here is a petition for a new road; do you fellows want to sign it," and they took it.
Q. It took 15 minutes to say that and to sign four names?
A. Yes sir.
Q. You didn't tell them about any instructions that Mr. Hoffman had given your father?
A. No sir, I didn't know any.
Q. Your father hadn't conveyed that to you; did you hear his testimony about what Mr. Hoffman said?
A. Yes sir.
Q. He didn't tell you that when he gave this petition to you?
A. I simply knew it was a petition for a road and it didn't interest me very much, and he just wanted me to take it up there.
Q. Did he tell you where to go?
A. He said "Go to Dwyer and see if you can get those signers."
Q. Did he tell you any particular persons?
A. No sir, he left it to me.
Q. And you walked into the barber shop and found four men there?
A. I found a number there, but four had a right to sign it.

By Mr. Cramer: I make the same motion to strike this testimony out of the record.
By the Court: The same ruling.

CHESTER THOMPSON, produced as a witness on behalf of the defendants, was duly sworn to testify the truth, the whole truth, and nothing but the truth and testified as follows:

Direct examination by Mr. Haggard:

Q. I hand you an instrument marked No. 1 for identification; do you recognize that instrument?

By Mr. Cramer: The same objection.
By the Court: The same ruling.

[fol. 532] A. Yes sir.
Q. This is your signature?
A. It is.

Q. In your hand-writing?
A. Yes sir.
Q. Do you know who presented that paper to you for signature?
A. Yes sir.
Q. Who?
A. J. A. Shaw.
Q. That is the old gentlemen or the son?
A. They were both there?
Q. What statement did they make to you as to the character of this instrument?
A. We had talked of this road coming through and he said he had a petition and I look- it over and said I was ready to sign it.
Q. What was your understanding at the time you signed it as to what the instrument was you were signing?

By Mr. Cramer: I object to what his understanding was.
By the Court: Sustained.

Q. What instrument did you think you were signing?
A. A petition.
Q. For what?
A. For a road.

Cross-examination by Mr. Cramer:

Q. When was this presented to you, Mr. Thompson?
A. In February or March.
Q. What year?
A. 1917.
Q. Where do you live?
A. I live about 12 miles north of here.
Q. How near the road?
A. Right on the road.
Q. The proposed road?
A. Yes sir.
Q. What is your business?
A. I am on a homestead farming.
Q. Where did you vote last?
A. In Missouri.
Q. You haven't voted since that time, have you?
A. No sir.
Q. Did you register since that time?
A. I wasn't here long enough to register.
Q. That was true at the time you signed this?
A. No. I have been here long enough to sign that petition.
Q. No, I mean you hadn't registered so as to qualify you to vote at the time you signed this?
A. No sir.

FRANK N. HALL, produced as a witness on behalf of the defendants, was duly sworn to testify the truth, the whole truth, and nothing but the truth and testified as follows:

Direct examination by Mr. Haggard:

Q. I call your attention to this instrument marked No. 1 for identification; is that your signature on that?

By Mr. Cramer: The same objection.
By the Court: The same ruling.

[fol. 533] A. Yes sir.
Q. Who presented that to you?
A. James Shaw.
Q. The young man?
A. Yes, sir.
Q. What statement did he make to you at the time as to what the character of the instrument was?
A. He said it was a new road and described it to me.
Q. What did he say this instrument was?
A. A petition.
Q. What did you understand to be the character of this instrument at the time you signed it?
A. A petition for a new road.

By Mr. Cramer: With reference to the testimony of Mr. Thompson I reserve the motion to strike the testimony.

Cross-examination by Mr. Cramer:

Q. When this petition was presented to you by Mr. Shaw where were you?
A. If I remember right, I was in my store.
Q. Where is that?
A. Next to the barber shop. I might have been in the barber shop; I won't say for sure.
Q. How long a time were you and Mr. Shaw together discussing this matter?
A. I couldn't say; perhaps 15 or 20 minutes.
Q. What was the conversation?
A. We talked the road over, where it was to run to Wheatland, and then I signed it.
Q. Did you read the document?
A. Yes, sir.
Q. Who had signed it before you, if anyone?
A. There had been several signers, I don't remember at the time, people who lived along the road.
Q. Do you know it to be a fact that they were people living along the road?
A. Yes, sir.
Q. Were you acquainted with all of them?
A. Yes, sir.

Q. Do you know whether or not John Mullin's signature was attached to that or not?

A. I don't know.

Q. Now, of course, I have no hesitancy in telling you that this is important; were the two documents together at the time they were presented to you?

A. I don't remember, but I think they were.

Q. If you were swearing to it as a fact, you wouldn't want to say under oath that the two documents were together?

A. No, I wouldn't want to swear to it, but I think they were.

Q. Let's kind of reason this out. You are a business man; what is your business?

A. Store keeper.

Q. And part of your business consists in giving orders, signing statements and bills and things of that character?

A. Yes, sir.

Q. So that it is not a new thing for you to execute a document of one or two pages?

A. No, sir.

Q. And contracts and things of that character—you know and I know in the ordinary run of affairs, the signatures are always appended at the end, or on the last page of the document, aren't they?

A. Not always, I don't think.

[fol. 534] Q. It is so much so that you could state it as a general rule?

A. As a general rule, yes.

Q. Now just take this, in the ordinary course of events, you notice that this second page bears the signature of John Mullin, Wheatland Post Office and there are a long list of lines for ten persons to sign, and on the first page there are absolutely no lines there for signatures, except that there happens to be a blank space; don't you think, if the documents had been presented to you fastened together, that you would have signed on the last page where John Mullin's name appears?

A. I am not certain. If the other signatures were on there, I might have put it down there.

Q. As a prudent and experienced business man, you would be inclined to sign that portion of the document that you wanted to be bound by?

A. Sure.

Q. You notice that the first page relates to a waiver of claim for damages and donates certain right-of-way, and is not a petition, if considered by itself?

A. I signed it as a petition.

Q. I didn't ask you that. When you signed that, did you intend to waive your claim for damages and donate the right-of-way?

A. I signed is as a petition.

Q. What did you intend to do, sign the first page?

A. I intended to sign it so it would go before the County Commissioners. I didn't want any damages. I didn't sign it as a waiver, but I di-n't care.

Q. Was the question discussed whether it was or was not a waiver?
A. I didn't care.
Q. Did the thought come to your mind at that time whether it was or was not?
A. I didn't care so it didn't come to my mind.
Q. How old are you?
A. 27.
Q. When did you vote last?
A. At the last election.
Q. What are the facts; at the time you signed this were you a registered, qualified voter?
A. I had been here long enough to vote, five years, and I was registered.
Q. Did you notice, Mr. Hall, at the time this document was presented to you that there were two holes as if the original fasteners had been removed and new fasteners replaced?
A. I didn't notice that.

By Mr. Cramer: I make the same motion with reference to Mr. Hall's testimony, to strike it out.
By the Court: The same ruling.
By Mr. Haggard: I desire to introduce this paper in evidence for the purpose of calling the attention of the court to the nature of the instrument. The transcript does not really show that these two papers were filed together and I desire the original evidence for that purpose.
By Mr. Cramer: I have no objection to the paper, but I don't want any limitations, for the plaintiffs want it introduced for all purposes.

The paper was then marked by the reporter "Defendant's Exhibit No. 1," and is hereto attached and made a part hereof.
By Mr. Haggard: The defendants rest.

[fol. 535] D. F. Romine, produced as a witness on behalf of the plaintiff in rebuttal, was duly sworn to testify the truth, the whole truth, and nothing by- the truth and testified as follows:

Direct examination by Mr. Cramer:

Q. State your name?
A. D. F. Romine.
Q. Where do you live?
A. Six miles northeast,
Q. What is your business?
A. Farmer.
Q. I hand you herewith a document marked No. 1, on the first page of which appears a pencil signature "D. F. Romine"; is that your signature?
A. Yes sir, that is my name.

Q. Did you write it there?
A. No sir.
Q. On the date of March 21, 1917, or during that year, were you a qualified voter of Platte County, Wyoming?
A. No sir, I guess not.
Q. You had not registered?
A. No sir.
Q. You had not lived in the State long enough?
A. No sir.
Q. When did you come to the State?
A. I think along in April some time, 1916, I think it is.

Cross-examination by Mr. Haggard:

Q. Have you filed on a homestead in this County?
A. No sir; I own some land down here.
Q. You authorized the signing of your name to this petition, did you?
A. Yes sir.

By Mr. Cramer: To which I object.
By the Court: He may state the facts.
By Mr. Cramer: Let him state what he did or said.

A. (continued.) There were three of us—two cousins and myself—in on the place, and I told either of them, when the petition was presented, to sign it for the road, as we wanted the road.

Redirect examination by Mr. Cramer:

Q. That authorization, so-called, was not in writing?
A. No sir.
Q. You just told him by work of mouth?
A. Yes, I just told him by work of mouth to sign the petition, as we all wanted the road.

Miss Bessie Fitz, produced as a witness on behalf of the plaintiff in rebuttal, was duly sworn to testify the truth, the whole truth, and nothing but the truth and testified as follows:

Direct examination by Mr. Cramer:

Q. State you- name?
A. Bessie Fitz.
[fol. 536] Q. Where do you live?
A. Wheatland, Yvoming.
Q. What is your business?
A. County Clerk.
Q. As County Clerk, do you have control and charge of the books showing the registration of those who undertake to qualify to vote?
A. I do.

Q. Have you the registration books showing those who have registered for the year 1916?

A. I have.

Q. Was 1916 the last registration?

A. It was.

Q. Now will you ascertain is J. C. Spaeth is registered as a voter? What do your records show?

By Mr. Haggard: Objected to as immaterial and irrelevant. The Statute provides that the petition shall be signed by electors, not qualified electors, and the fact that he is not registered there does not determine whether or not he is an elector.

By the Court: The Constitution provides who is a qualified elector in residing in the County and State a certain length of time. I will permit the witness to answer, but I don't want to take up a great deal of time.

A. I do not find him registered.

By Mr. Cramer: The Plaintiff rests.

No. 1

DEFENDANTS' EX. NO. 1

We, the undersigned, being all the owners of land through which the following proposed road will pass, in consideration of the Board of the County Commissioners of Platte County, declaring the said a County road, do hereby covenant and agree with said Board of the County Commissioners of said Platte County, Wyoming, that we will each and all of us waive any and all claims to damages for the land taken for such road, and for moving fences and building fences, and hereby donate to said county a right of way for such road:

Commencing at a point where County Road No. 13 intersects the East line of Sec. 9, Tp. 26, Rg. 68 W. and running thence south on Sec. line to the S. E. corner of Sec. 33, 26, 68, thence South on Sec. line to the E. ¼ cor. Sec. 4, Tp. 25, 68, thence in a southerly direction to the N. E. cor. of the S. E. ¼ of S. W. ¼ Sec. 3, 25, 68, thence South on half section line to the center of Sec. 10, thence E. ¼ mile to the N. E. cor. of N. W. ¼ of S. E. ¼, Sec. 10, thence south ¼ mile to the N. E. cor. of the S. W. ¼ of the N. E. ¼ of [fol. 537] Sec. 15, thence East ¼ mile to the N. E. cor. of S. E. ¼ of N. E. ¼ of Sec. 15, thence south on section line to the E. ¼ corner of Sec. 27, Tp. 25, Rg. 68.

D. F. Romine, F. E. Martin, W. A. Martin, C. L. Thompson, H. L. Modons, M. Rinker, F. N. Hall, W. R. Cook, Jas. Hood, J. C. Spaeth, John Mullin.

To the Board of County Commissioners, Wheatland, Wyoming:

The undersigned ask that a public road, commencing at a point where County Road No. 13 intersects the east line of Secton 9, T. P. 26 N., R. 68 W. of the 6th Principal Meridian, Wyoming, and running thence south on section line to the Southeast corner of Sec. 33, Tp. 26, Rg. 68, thence south on Section line to the E. quarter corner of Sec. 4, Tp. 25, Rg. 68, thence in a southeasterly direction to the northeast corner of the southeast quarter of the southwest quarter of Sec. 3, Tp. 25 Rg. 68, thence South on the half section line to the center of Sec. 10, thence east one quarter of a mile to the northeast corner of the northwest quarter of the southeast quarter Sec. 10, thence south three quarters of a mile to the northeast corner of the southwest quarter of the northeast quarter of Sec. 15, thence east one-quarter mile to the northeast corner of the southeast quarter of the northeast quarter of Sec. 15, thence south on Section line to the East quarter corner of Sec. 27, Tp. 25, Rg. 68, be established, said road to be 60 — wide.

Respectfully submitted, Names, John Mullin; Postoffice, Wheatland.

[fol. 538] Names of Persons Owning Land Along Road

Road Law

Petition for Opening, Closing, or Altering Road

Any person desiring the establishment, vacation or alteration of a public road, shall file in the office of the County Clerk of the proper county, a petition signed by ten or more electors of the county residing within fifteen miles of the road proposed to be established, altered or vacated, in substance as follows: To the Board of County Commissioners of —— County. The undersigned asks that public road, commencing at —— and running thence — and terminating at —— be established (altered or vacated as the case may be).

With said petition shall be filed a list containing the names and also the known postoffice address of each person owning or having an interest in any land over which the proposed establishment, vacation or alteration of a public road is to be made.

No petition will be received or considered by the Commissioners that does not conform to the law. Blank petitions can be obtained from the County Clerk, ——, Wyoming.

Below give the names of all persons owning land through which the road passes, but who have not signed the petition:

Names	Postoffice
F. N. Hall	Dwyer, Wyo.
James Hood	" "
John W. Cook	" "
State of Wyoming	
Joseph C. Spaeth	Dwyer, Wyo.
J. M. Eddy	" "
R. G. Eddy	
W. R. Cook	" "
C. H. Thompson	" "
Morris Rinker	" "
S. R. Mills	" "
W. E. Meadow	Uva, "
F. S. Mitchell	Uva,
Alonzo Heaton	
M. E. Ames or N. L. L. Co	
North Laramie Land Co	
H. M. Shelburn	Uva,
John Mullin	"
Wm. Martin	"
Mr. Romine	"
	"

Petition No. 83. Date: April 4, 1917.

Bessie S. Fitz, County Clerk."

[fols. 539 & 540] 24. The said Court erred in each and every of its decisions and rulings upon the several assignments of error argued by the Plaintiff in Error in said Supreme Court of the State of Wyoming, for which errors the Plaintiff in Error, North Laramie Land Company, prays that the said judgment of the Supreme Court of the State of Wyoming dated October 18, 1923, be reversed and a judgment rendered in favor of the Plaintiff in Error and for costs.

Dated at Cheyenne, Wyoming, this 12th day of January, A. D. 1924.

Roderick N. Matson, Max Pam, Harry Boyde Hurd, Attorneys and Solicitors for North Laramie Land Company, Plaintiff in Error.

[fols. 541 & 542] In Supreme Court of Wyoming

[Title omitted]

Petition for and Order Allowing Writ of Error

Considering itself aggrieved by the final decision of the Supreme Court in rendering judgment against it in the above entitled case, the Plaintiff in Error hereby prays a Writ of Error, from the said

decision and judgment to the United States Supreme Court, and an order fixing the amount of bond.

Assignment of errors herewith.

Roderick N. Matson, Max Pam, Harry Boyd Hurd, Attorneys and Solicitors for North Laramie Land Company, Plaintiff in Error.

Let the Writ of Error issue upon the execution of a bond by North Laramie Land Company to Albert E. Hoffman, Ulyssis S. Jones, George S. Martin, individually and as constituting the Board of County Commissioners of Platte County, Wyoming, and the Board of County Commissioners of Platte County, Wyoming, in the sum of Five hundred ($500) Dollars.

Dated January 12, 1924.

Charles N. Potter, Chief Justice Supreme Court of Wyoming.

[fol. 543] Bond on Writ of Error—Approved January 12, 1924; omitted in printing

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[fol. 544] In the Supreme Court of the United States

[Title omitted]

Writ of Error

United States of America, ss:

The President of the United States of America to the Honorable the Judge of the Supreme Court of the State of Wyoming, Greetings:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between North Laramie Land Company, a corporation, and Albert E. Hoffman, Ulyssis S. Jones, George S. Martin, individually and as constituting the Board of County Commissioners of Platte County, Woming, and the Board of County Commissioners of Platte County, Wyoming, wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of their validity; a manifest error hath [fols. 545 & 546] happened to the great damage of the said North Laramie Land Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do com-

mand you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this Writ, so that you have the same in the said Supreme Court at Washington, within 60 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable William Howard Taft, Chief Justice of the United States, the 12th day of January, in the year of our Lord, one thousand nine hundred and twenty-four.

Charles J. Ohuhous, Clerk District Court United States, District of Wyoming. (Seal United States District Court, District of Wyoming.)

Allowed January 12, 1924. Charles N. Potter, Chief Justice Supreme Court of Wyoming.

[fol. 547] SUPREME COURT OF WYOMING

[Title omitted]

CERTIFICATE OF LODGMENT

I, Fred S. Fobes, clerk of the said court, do hereby certify that there was lodged with me as such clerk on January 14, 1924, in the matter of North Laramie Land Company, a Corporation, Plaintiff in error, vs. Albert E. Hoffman, Ulyssis S. Jones, George S. Martin, individually and as constituting the Board of County Commissioners of Platte County, Wyoming, and the Board of County Commissioners of Platte County, Wyoming, Defendants in Error:

1. The original bond of which a copy is herein set forth.

2. Five copies of the writ of error, as herein set forth, one for each defendant, and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Cheyenne, Wyoming, this January 14, 1924.

Fred S. Fobes, Clerk of the Supreme Court, State of Wyoming. (Seal Supreme Court of the State of Wyoming.)

[fols. 548-552] [Title omitted]

CITATION—In usual form, showing service on Wm. C. Kinkead et al.; omitted in printing

[fol. 553] SUPREME COURT OF WYOMING

RETURN TO WRIT OF ERROR

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of the State of Wyoming, in the City of Cheyenne, this 27th day of February, A. D. 1924.

Fred S. Fobes, Clerk Supreme Court of Wyoming. (Seal of Supreme Court of the State of Wyoming.)

Costs of suit omitted.

[fol. 554] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AS TO PRINTING RECORD—Filed March 13, 1924

It is stipulated and agreed by and between Max Pam, Harry Boyd Hurd, and Roderick N. Matson, counsel for Plaintiff in Error, and William C. Kinkead, C. R. Ellery, Harry B. Henderson, Jr., Jesse E. Jacobson and C. A. Paige, counsel for Defendants in Error, that in order to save expenses in the printing of the record herein, the following portions of the record, the same being sufficient to show the errors complained of, shall be printed, and no more, to-wit:

	Page of record
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Summons in Error	11
Return of Summons in Error	12
Original papers including Bill of Exceptions in District Court	22 to 274
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[fol. 555] Citation	548 to 549
Acknowledgment of Service of Citation	549
Deputization for Service of Citation	550
Return of Service of Citation	551
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It is further stipulated and agreed that if from oversight or omission any necessary part of the record be not thus printed, that the Plaintiff in Error has the right to print, or may be required by Defendants in Error to print, any further or additional portions thereof.

Dated this 3d day of March, 1924.

Max Pam, Harry Boyd Hurd, Roderick N. Matson, Counsel for Plaintiff in Error. Wm. C. Kinkead, C. R. Ellery, Harry B. Henderson, Jr., C. A. Paige, J. E. Jacobson, Counsel for Defendants in Error.

[File endorsements omitted.]

Endorsed on cover: File No. 30,190. Wyoming Supreme Court. Term No. 323. North Laramie Land Company, plaintiff in error, vs. Albert E. Hoffman, Ulyssis S. Jones, George S. Martin, individually, etc., et al. Filed March 12th, 1924. File No. 30,190.

Office Supreme Court, U. S.
FILED
MAR 9 1925
WM. R. STANSBURY
CLERK

(30,190)

No. 323

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1924.

NORTH LARAMIE LAND COMPANY,
Plaintiff in Error,

vs.

ALBERT E. HOFFMAN, ULYSSIS S. JONES, GEORGE S. MARTIN, Individually, etc., et al.,
Defendants in Error.

In Error to the Supreme Court of the State of Wyoming.

BRIEF FOR NORTH LARAMIE LAND COMPANY, PLAINTIFF IN ERROR.

MAX PAM,
HARRY BOYD HURD,
RODERICK N. MATSON,
GEORGE G. KING,
Attorneys.

HAWKINS & LOOMIS CO., LAW PRINTERS, CHICAGO.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1924.

NORTH LARAMIE LAND COMPANY, *Plaintiff in Error,* vs. ALBERT E. HOFFMAN, ULYSSIS S. JONES, GEORGE S. MARTIN, Individually, etc., et al., *Defendants in Error.*	In Error to the Supreme Court of the State of Wyoming.

BRIEF FOR NORTH LARAMIE LAND COMPANY, PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

On December 10, 1917, the North Laramie Land Company, plaintiff in error, (hereinafter referred to as the "Land Company"), filed a petition in the District Court of the First Judicial District, in Platte County, in the State of Wyoming, to restrain the Board of County Commissioners of Platte County (hereinafter referred to as the "Board") from opening a road over certain land of the Land Company.

The Board appeared, and a hearing was had in the District Court upon issues of law and fact. The judgment of the District Court was against the Land Company.

The Land Company removed the case by writ of error to the Supreme Court of the State of Wyoming, and on October 18, 1923, the State Supreme Court affirmed the District Court.

The case is in this court on a writ of error to the Supreme Court of the State of Wyoming.

From the pleadings and proofs it appeared that in May, 1917, the Board caused public notice to be given that it had decided to establish a road in a certain location specified in the notice, and that all objections and claims for damages should be filed before June 7, 1917. The Land Company was the owner of certain of the land upon which the proposed road was to be located.

The time within which the Land Company might file its objections and claim for damages was extended by stipulation until July 3, 1917; but without awaiting the claim of the Land Company the Board, on June 8, 1917, appointed appraisers to examine and report on the other claims which had previously been filed. The instructions to the appraisers did not include an investigation of the damages to be sustained by the Land Company. On June 16, 1917, the appraisers inspected the location of the proposed road and decided that in all instances the benefits would exceed the damages, reporting these conclusions to the Board. On June 30, 1917, which was within the time allowed by the stipulation, the Land Company filed its claim. The Board did not appoint any appraisers to consider the claim of the Land Company. On July 5, 1917, the matter of establishing the road came up in a meeting of the Board. The appraisers were not re-appointed, nor were any new appraisers appointed; no action was taken on the claim of the Land Company; but on August 10, 1917, the Board ordered that a road be established in a certain specified location located in part on the lands of the Land Company.

The suit in the District Court followed.

The statute of the State of Wyoming (hereinafter referred to as the "Road Act") prescribes the following procedure in the location of public roads (reference is made to the Compiled Statutes of Wyoming, quoted *infra*, pages 35-42);

(*a*) A petition signed by ten or more electors of the county, residing within fifteen miles of the proposed road, may be filed in the office of the county clerk. (Sec. 2516.) The petitioners may be required to make a deposit of money to defray the expenses of laying out the road. (Sec. 2517.)

(*b*) Upon the filing of the petition the Board, or its chairman ("if in his judgment an emergency exists"), shall appoint a disinterested elector, who may be a member of the Board, as viewer, to determine whether the proposed road is required. (Sec. 2518.)

(*c*) The viewer is required to report whether, in his judgment, the proposed road is practicable and ought to be established, stating the probable cost and such other matters as shall enable the Board to act understandingly. (Sec. 2521.)

(*d*) If the Board shall determine to establish the road, it is required to appoint a day, not less than thirty days after such determination, on or before which date all objections and claims for damages are to be filed with the county clerk. (Sec. 2524); and notice of the proposed establishing of the road is required to be published in a newspaper or posted, and mailed. (L. 1913, Ch. 73, Sec. 2.) The statute does not specify that the notice shall state the time within which objections and claims may be filed. It contains a form of notice, which form contemplates and provides for a statement of the time within which claims may be filed, but the use of

the form is permissive and not mandatory. The statute declares that "the publication and posting of such notice shall be a legal and sufficient notice to all persons" owning or claiming any interest in the lands. (*Ibid.*) The statute does not provide for a hearing of the claims or for a meeting of the Board upon the day fixed for filing the claims, but the Board is given power to continue claims for "further hearing" until the matter can be disposed of. (Sec. 2527.)

(*e*) When claims for damages are filed, the Board at its next regular or special meeting "or as soon thereafter as may be practicable and convenient" is required to appoint three suitable and disinterested electors, as appraisers, to view the ground on a day fixed by the Board and report in writing within thirty days, fixing the amount of the damages sustained by the claimants. (Sec. 2528.) The appraisers are appointed *ex parte* and without notice to the claimants.

(*f*) The appraisers are required to meet and qualify within ten days after their appointment. There is no requirement that notice of their meeting shall be given. Thereupon they are required to view the ground, fix the damages and file a written report with the county clerk. (Sec. 2530.) "They shall, whenever they can conveniently do so, notify the claimants or their agents, of the place of their meeting, and may hear such evidence as they may deem necessary in determining the amount of damages fixed by them." (Sec. 2530.) This provision is permissive and not mandatory.

(*g*) At the next meeting of the Board after the appraisers have reported "or as soon thereafter as may be practicable" the Board may hear testimony and consider remonstrances, increase or diminish the damages

allowed by the appraisers, and establish the road, and in so doing they may condition the establishing of the road upon the payment of the expenses by the petitioners. If the Board determines to establish a road, it is required to be platted by the county surveyor, and the plat is recorded in the county records. (Sec. 2531.) The time when the Board may make its final determination is left entirely to the discretion of the Board, and no notice to any claimant is required.

Following these provisions of the Act, there is a provision for appeals. Any applicant for damages may appeal from the final decision of the Board; "but notice of such appeal must be made to the county clerk, within thirty days after such decision has been made by the said Board, or such claim shall be deemed to have been abandoned." (Sec. 2536.)

In the case at bar, the statutory procedure was complied with in the manner and to the extent following:

PETITION.

A written instrument, consisting of two pages, was introduced in evidence as the petition. There was an issue of fact on the trial whether these two pages were joined together when signed by the so-called petitioners, but this question was determined by the trial Court in favor of the Board, and the State Supreme Court declined to disturb the finding. We do not consider the question as of any consequence. The first of the two pages was in terms a release of damages signed by eleven land owners along the line of the proposed road. The second page was a petition for the location of the road in statutory form, signed by one petitioner.

It was, and is, contended by the Land Company that the waiver is not in terms or in substance a petition, that the persons signing the waiver were not petitioners, and that the entire proceedings were void for want of a petition conforming to the statute. The trial Court and the State Supreme Court overruled this contention.

There was evidence tending to show that the waiver was circulated separately and much earlier than the date of the petition, and that the two papers originated as separate documents. And the Land Company further contended (as it now contends) that the text of the documents and their physical relation to each other negative the theory that the signers of the waivers were petitioners. On the issue thus arising counsel for the Board were permitted to prove by oral evidence the conversations between the person who circulated the waiver and the persons who signed it. This evidence was introduced in order to show that the persons who signed the waiver understood that they were signing a petition for a road. This evidence was objected to on every occasion and the point was saved and argued on review.

Our position in this court is that by reason of the text and physical relation of the two documents the signers of the waiver were not petitioners, that it was incompetent to vary, modify or explain the text of the waiver by oral evidence, and that the whole proceeding was void for want of a sufficient petition.

Viewer.

After the filing of the petition the chairman of the Board appointed himself to be the viewer. He has this power only in the event of an emergency. The existence of an emergency did not appear, nor did it appear that in the opinion of the chairman such an emergency existed.

Report of Viewer.

The chairman of the Board, in his capacity of viewer, reported to the Board recommending the establishment of the road and expressing his judgment that it would be of benefit to a great many people. He estimated the expense of the road at "about $5,000."

Notice.

Public notice was given in the Wheatland Times. The notice was in the form permitted by the statute and contained the information that claims for damages should be filed not later than June 7, 1917.

Claim of Land Company.

By stipulation, our time to file a claim for damages was extended until July 3, 1917, but our claim was in fact filed on June 30, 1917. Whether the notice was mailed to the land owners does not appear.

Appraisers.

Appraisers were appointed on June 8, 1917, and they were qualified seven days later. They viewed the road on June 16, 1917, but they did not give any notice of their meeting, or hold a public hearing, or examine any witnesses, and their decision against the allowance of any damages was wholly *ex parte*.

Action by Board.

The matter came up before the Board on July 5, 1917, and was continued until August 10, 1917. No notice of either meeting was required by law, and the giving of no such notice is described in the record. On August 10, 1917, the Board established the road, but this action was also *ex parte* and without notice.

As will more fully appear from the assignments of error, the following questions are involved:

1. We contend that the Road Act violates the Fourteenth Amendment to the Constitution of the United States, and particularly the "due process" clause, for the reason that the statute makes no efficient provision for a *hearing*.

2. That the proceedings here in question were wholly void for want of a petition conforming to the requirements of the statute of Wyoming.

3. That there was prejudicial error in receiving and considering oral evidence as to the intention and understanding of the persons who signed the so-called waiver.

Each of these points was argued in the trial court and covered by assignments of error in the State Supreme Court, and each of them is also covered by the assignments of error in this court.

ASSIGNMENT OF ERRORS.

Now comes North Laramie Land Company, plaintiff in error, by Roderick N. Matson, Max Pam and Harry Boyd Hurd, its attorneys and solicitors, and respectfully submits and shows that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Wyoming in the above entitled matter and cause, there is manifest error in this, to wit:

1. The said Court erred in affirming the judgment of the District Court of Platte County, in the State of Wyoming.

2. The said Court erred in affirming the judgment of said District Court in that the laws and statutes of the State of Wyoming with respect to the location of public roads and the taking of land therefor, and particularly Sections 2516, 2518, 2520, 2521, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2536, 2537 and 2538 of Chapter 168 of the Wyoming Compiled Statutes of 1910, Reprinted in 1917 and each of said sections, are repugnant to the Fourteenth Amendment to the Constitution of the United States of America.

3. The said Court erred in affirming the judgment of said District Court in that the statutes of the State of Wyoming with respect to the location of public roads and the taking of land therefor, and particularly the statutes and laws hereinabove expressly referred to, are repugnant to the Fourteenth Amendment to the Constitution of the United States of America, the effect of said statutes being to deprive

the owners of the land so taken of their property without due process of law.

4. The said Court erred in holding and deciding in favor of the validity of said statutes of the State of Wyoming, notwithstanding their repugnancy to the Constitution of the United States of America and particularly to the Fourteenth Amendment thereto.

5. The said Court erred in refusing to hold and decide that the procedure prescribed by said statutes of the State of Wyoming for the location of public roads and the taking of land therefor amounted to a denial of due process of law within the meaning of the Fourteenth Amendment to the Constitution of the United States of America.

6. The said Court erred in refusing to hold that said statutes were repugnant to the Fourteenth Amendment to the Constitution of the United States for the following reasons, and each of them, to wit:

(*a*) That said statutes permit the taking of private property for public use without compensation;

(*b*) That said statutes make no provision whatever for just compensation to the owners of the land taken for the value thereof;

(*c*) That said statutes permit the set-off of benefits to land not taken in determining the compensation to be paid to the owners of the land taken;

(*d*) That said statutes work a denial of due process of law in empowering the Board of County Commissioners therein mentioned to fix the compensation payable to the owners of the land taken;

(*e*) That due process of law is denied by Sections 2524, 2525 and 2526 of said statutes (otherwise known as Sections 12, 13 and 14 of Chapter LXIX of the Laws of 1895), wherein it is provided that claims for damages by reason of the location of a public road shall be filed not later than a day appointed by the Board of County Commissioners and that no claims for damages filed after the day so appointed shall be considered or entertained, and that the only notice to which the owners of the land are entitled by said statutes is notice either by publication in a weekly newspaper published in the county or by posting upon the land, either notice being declared by said statutes to be sufficient;

(*f*) That due process of law is denied by Section 2531 (otherwise known as Section 19 of Chapter LXIX of the Laws of 1895), wherein the Board of County Commissioners therein referred to is permitted but not required to hear testimony with respect to petitions for damages, and is permitted but not required to consider any such evidence, or any matter or thing contained in any petition for damages in arriving at its judgment with respect to the compensation to be paid for land taken;

(*g*) That due process of law is denied by said statutes, and particularly by Sections 2536 thereof (otherwise known as Section 24 of Chapter LXIX of the Laws of 1895), wherein an appeal is allowed to applicants for damages on condition that notice of such appeal shall be given to the County Clerk within thirty days after the decision of the Board of the County Commis-

sioners, or such claim shall be deemed to have been abandoned, without providing that notice of the decision of the Board of County Commissioners shall be given to the claimant;

(*h*) That due process of law is denied to the owners of land taken for public roads thereunder by each and every provision of said statutes and each and every of the proceedings therein prescribed and provided for.

7. For each of the reasons assigned in the next preceding assignment the said Court erred in affirming the judgment of said District Court.

8. The said Court erred in affirming the judgment of said District Court in that all of the acts and proceedings of the defendants in error, individually and as the Board of County Commissioners against the plaintiff in error and its property, were unlawful, void and in violation of the Fourteenth Amendment to the Constitution of the United States of America and constituted a taking of the property of the plainiff in error without compensation and without due process of law.

9. The said Court erred in holding and deciding that the statutes of the State of Wyoming hereinabove referred to were valid and legal and not in violation of the Constitution of the United States, and particularly of the Fourteenth Amendment thereto.

10. The said Court erred in holding and deciding that the plaintiff in error was not entitled to relief in equity against the unlawful taking and confiscation of its property threatened and intended by the defendants in error under pretense of authority derived from said statutes of the State of Wyoming, all and every section of which were and are in contra-

vention of the Constitution of the United States of America, and particularly of the Fourteenth Amendment thereto.

11. The said Court erred in refusing to hold and decide that said proceeding in said District Court was a direct attack as distinguished from a collateral attack upon the action of said defendants in error complained of.

12. The said Court erred in refusing to hold and decide that under the statutes of the State of Wyoming above referred to the Board of County Commissioners has no power to establish or alter any county road without any petition previously filed, preliminary proceedings taken previous to the giving of notice, and fixing the time therefor.

13. The said Court erred in holding and deciding that the document introduced in evidence and designated in the opinion of said Court as the "waiver," being a certain document reading:

> "We, the undersigned, being all the owners of land through which the following proposed road will pass, in consideration of the Board of County Commissioners of Platte County, declaring the said a county road, do hereby covenant and agree with the said Board of the County Commissioners of said Platte County, Wyoming, that we will each and all of us waive any and all claims to damages for the land taken for such road, and for moving fences and building fences, and hereby donate to said county a right of way for such road:"

and describing the proposed road and bearing the signatures of ten different persons among whom the plaintiff in error was not included, was in substance

a sufficient petition for the location of a public road in compliance with said statutes of the State of Wyoming, and particularly Section 2516 thereof (otherwise known as Section 4 of Chapter LXIX of the Laws of 1895).

14. The said Court erred in holding and deciding that it was not necessary that the record and proceedings of the defendants in error, as the Board of the County Commissioners, should show full and complete compliance with all the requirements of said statutes with respect to the taking of land for public roads.

15. The said Court erred in holding and deciding that with respect to the proceedings prescribed by said statutes for the taking of land for public roads, compliance with said statutes by the Board of the County Commissioners should be presumed when not affirmatively appearing.

16. The said Court erred in refusing to hold and decide that in proceedings had by the Board of the County Commissioners under said statutes with respect to the taking of land for public roads all of the requirements of said statutes with respect to the procedure therein prescribed must affirmatively appear in order to validate and effectuate any such proceedings.

16. The said Court erred in holding and deciding that it was not necessary that the statutory qualifications of the signers upon a petition under said statutes for the taking of land for public roads should affirmatively appear from the petition.

17. The said Court erred in holding and deciding that the petition in question was effective and sufficient even though it omitted the names of three persons

who were property owners of land through which the proposed road was to run.

18. The said Court erred in holding and deciding that under and pursuant to said statutes it was competent for the Chairman of the Board of County Commissioners to appoint himself to be the viewer therein provided for, notwithstanding there was nothing in the record and proceedings had by the Board of County Commissioners tending to show that an emergency existed.

19. The said Court erred in holding and deciding that the report of the viewer made to said Board of County Commissioners with respect to the proposed road was a substantial compliance with said statutes.

20. The said Court erred in refusing to hold and decide that the Public Road Law of Wyoming violated the Constitution of the United States of America in that it denied due process of law in failing to require notice to be given by the appraisers of their meeting to fix the amount of damages.

21. The said Court erred in holding and deciding that the notice provided for in said Road Law to be given by the Board of County Commissioners of their decisions with respect to claims for damages is constitutional and not a denial of due process of law within the meaning of the Fourteenth Amendment to the Constitution of the United States of America.

22. The said Court erred in refusing to hold and decide that the stipulation entered into by the chairman of the Board of County Commissioners, whereby the plaintiff in error was granted an extension of time within which to file its objections and claim for damages, was valid and sufficient and effectively extended the time for the filing of the claim of the

plaintiff in error, notwithstanding the provisions of the statute in that regard.

23. The said Court erred in holding and deciding that the following evidence introduced by defendants in error was competent and admissible, to wit:

"T. A. Shaw, produced as a witness on behalf of the defendant, was duly sworn to testify the truth, the whole truth, and nothing but the truth, and testified as follows:

Direct Examination by Mr. Haggard.

Q. State your name.
A. T. A. Shaw.
Q. Where do you reside?
A. In the northwest end of this County.
Q. How long have you resided there?
A. About 40 years.
Q. I will hand you this instrument purporting to be a petition for the establishment of a highway and a waiver of any claims for damages, and an agreement conveying said road on behalf of the signers thereof, which purports to have been filed on April 4, 1917; I ask you if you have ever seen that instrument before?

By Mr. Cramer: I object. If it is merely a question of identifying the signatures, we don't in any of the pleadings raise the question of the identity of the persons whose names may be on that document or any other. The second objection is that the Board of County Commissioners, acting in proceedings of this character, act as a court of limited jurisdiction and can only speak by their record, and they cannot correct defects in the record by parole testimony.

By Mr. Haggard: This is not an effort to correct any defects; it is merely an effort to explain the record so that the court may pass upon the condition of that record; nor is it clear that the two documents are to be considered as one. The defendants claim they are one document, and it is the purpose of this testimony to show that the signatures as they appear on there were signatures to the entire document consisting of two pages.

By the Court: I will hear this testimony, and will hear the entire argument at the conclusion as to the

admissibility of the testimony, and, if it is so stipulated, this testimony on this point may all be considered as having been objected to, and the testimony is received subject to the objection, and the court will reserve its right to rule on the objection hereafter.

A. Yes, sir, I recognize this as a petition I circulated.

Q. At the time you first saw that petition were these signatures upon it?

A. No sir.

Q. Do you know who circulated this petition?

A. Yes sir.

By Mr. Cramer: I will have to object to that as hearsay testimony.

By the Court: He may state, if he knows.

Q. Who did?

A. I did.

Q. At the time you circulated this petition were these two papers fastened together in the same condition they are now?

A. Yes sir.

Q. What, if any, statement did you make to these persons whose signatures you procured to that instrument, as to its character, when you solicited their subscription?

By Mr. Cramer: That is objected to, as we are not bound by any conversation he may have had.

By the Court: It may be received subject to the objection.

A. If I understand the question, I presented this to the people and asked them if they were willing to sign this in regard to opening up a road in this part of the County, and they all said they was willing to have this road opened up.

Q. And in response to that request of yours they did so sign the paper?

A. Yes sir.

By Mr. Cramer: I am not waiving my right to make these objections, if I cross-examine.

Cross-examination by Mr. Cramer.

Q. To the petition which has been handed you there is attached a typewritten document with various pencil and one pen signature; who prepared that document?

A. Well, sir, I couldn't answer that question. It was prepared in the County Commissioners' Office, I suppose, by the County Clerk.

Q. How did the matter come to your attention?

A. I don't know as I understand you.

Q. You circulated this, you say?

A. Yes sir.

Q. Who gave it to you to circulate?

A. Mr. Hoffman.

Q. Then you took the documents to the different people who you say signed their names here?

A. Yes sir.

Q. Your name is Shaw?

A. Yes sir.

Q. Where do you live?

A. Out here about 35 miles.

Q. How near the road?

A. Which road?

Q. We are only talking about one road—the proposed road.

A. I live about 15 miles from where this road intersects the road I travel.

Q. How did Mr. Hoffman happen to give this to you?

A. He wanted me to circulate it so as to get the names of the people on it to show whether they wanted the road or not.

Q. Isn't there anybody who lives closer, and is more interested in the road, than you?

A. Nobody is much more interested in the road than I am, but there is people lives right on this road.

Q. Why didn't you sign this?

A. I did sign it, if I am not mistaken.

Q. If you signed this, will you please point out your name.

A. I will take that part of it back. I will tell you why—

By Mr. Cramer: I object to that as immaterial as to why he didn't sign it. It purports on its face to be signed by a sufficient number of electors.

By the Court: He may answer.

A. (continued). This road connects with the road I travel as a County road, and it has been for a good

many years, and this road we are trying to get opened now we have been trying to get opened for about eight or ten years. Probably I didn't sign the petition, but I am interested in the road just the same. I don't know as it was necessary for me to sign the petition because I had my part of the road I traveled to where it intersects this road.

Q. Where does D. F. Romine live?

A. North of here about five miles.

Q. Are these various persons who signed this here now?

Q. Part of them are.

A. I don't know but what all of them are.

Q. I notice there is only one man, John Mullin, signed the printed copy of the petition; how did that happen?

A. If I can understand this right, Mr. Mullin signed the petition with the calculation or expectation of getting a little damages. He mght have thought he was signing the petition the same as the rest of them.

Q. Wasn't it presented to John Mullin?

A. Yes sir.

Q. You notice he is the only man who signed the second paper in your hand?

A. Yes sir.

Q. Why is that?

A. As I say, he signed that paper, with my understanding that he expected to get a little damage out of this.

Q. That is what he said when you talked to him?

A. Yes sir.

Q. What did he say?

A. I don't know whether I remember the conversation exactly, but he signed this petition the same as the rest of them, but maybe he didn't sign with the rest of them, but he signed with the calculation of having this road go through.

Q. I understand that was the purpose. I notice that the second petition, the printed petition, has a number of lines for signatures, and the first document, doesn't have any blank lines for signatures. You know that in the ordinary course of events, where a document is to be signed and is considered to be a whole document, that they always sign on the

last page, and John Mullin is the only one who signed on the last page, and every other man signed on the first page; why is that?

A. I don't know as I can explain that.

Q. You are the man who took it around; didn't you talk with them about it?

A. Yes sir.

Q. What did they say and what did you say?

A. I will repeat all the conversation I remember. I went to Mr. Mullin with this petition ans said: Mullin, I have another pettion for this road to go through" and he said: "All right. Do you think you can get it through this time?" and I said: "I think we have County Commissioners now who will be able to put it through." If there was any more conversation, I can't remember.

Q. Do you know anything you said to the other people except Mullin?

A. Yes sir.

Q. What did you say?

A. I said I had a petition, and asked them if they wanted to sign it, to open a road, and I explained the road, and they said "Yes, we want the road opened up and are willing to have it opened up". Whether there was any more conversation between me and them I don't know.

Q. When did you see the different parties?

A. I can't remember the time exactly.

Q. When did you receive this document?

A. Sometime in September, I think; I wouldn't say what time because I don't remember.

Q. Was it in the fall?

A. If it was in September, it must have been in the fall.

Q. But you didn't remember whether it was in September.

A. I don't remember whether it was September or October.

Q. At any rate it was in the fall?

A. Yes, sometime.

Q. Over what period of time did you work in getting these signatures?

A. It wasn't over two days.

Q. It wasn't filed until April.

A. Perhaps not.

Q. It shows on its face that it wasn't filed until April, doesn't it?

A. Yes.

Q. Who filed it?

A. I couldn't tell you. I brought it back and turned it over to the Commissioners.

Q. When?

A. I don't remember.

Q. Who did you turn it over to?

A. I don't know that either. I took it to the County Commissioners' office and turned it over to the County Commissioners or the County Clerk.

Q. Who have you talked with before you came here?

A. I might have talked with a lot of people.

Q. Have you talked with any lawyers?

A. No sir.

Q. You were put on the stand without a single conversation about what you were going to say?

A. No sir.

Q. You mean that you didn't have any talk with Mr. Paige or Mr. Haggard?

A. I didn't understand your question.

Q. Are you going to take that back?

A. Yes sir. I thought you meant who did I talk with before I put this petition in the office.

Q. No, I mean before you came here to testify, what lawyers did you talk with?

A. Those two gentlemen right there (indicating Mr. Paige and Mr. Haggard).

Q. What did you say and what did they say?

By Mr. Haggard: I object to that.

By the Court: Sustained.

Q. These different men, from time to time when you showed this document to them; did they read the whole thing?

A. They were supposed to and I think they did. They looked it over and I guess they read it.

Q. You don't know?

A. No, I couldn't tell whether they read it or not.

Q. You didn't stand there and watch them?

A. I did.

Q. At least, they used their eyes and went through the motions?

A. They seemed to be reading it, but maybe they were like I am and can't read.

Q. Can't you read at all?

A. Sometimes when I have got my glasses.

Q. It is a question of eye-sight then?

A. Yes sir, I can read. These people took the paper and read it over, I am satisfied.

Q. One was a petition for a road and the other was a waiver of damages?

By Mr. Haggard: Objected to as calling for a conclusion as to whether they were two separate instruments or one.

Q. There were two pages and one was a printed form of petition for a road and the other was a specially prepared page waiving damages and donating the road; now each time each one of those men read that document, those men who signed, were they owners of the land along the road, or were they men who could claim damages?

A. Do you mean deeded land, or just filed on?

Q. I don't care whether they can claim on deeded land or Carey Act, they could claim damages.

A. I am not well enough posted to know.

Q. But you knew that you couldn't claim damages, didn't you?

A. I didn't try.

Q. I didn't ask you whether you tried; please answer the question. You knew that you couldn't claim damages? You knew that you owned no land along the road and couldn't put in a claim for damages because of damages to your land, didn't you?

A. On this certain petition?

Q. Yes.

A. I am not owning any land on this petition.

Q. But you could have signed the petition?

A. I suppose I could.

Q. But you didn't?

A. I didn't.

Q. And these other people, instead of signing the second page, signed on the first page which relates only to waiver of damages and donation of land?

A. As near as I can see.

Q. You see it, don't you?

A. I think the paper——

Q. No thinking, you must answer my question (Former question repeated by the reporter as follows:)

And these people, instead of signing the second page, signed on the first page which relates only to waiver of damages and the donation of land?

That is a fact now, isn't it?

A. Yes sir, it appears that way the way it was signed.

Q. Have you been told that that is the turning point in this case as to whether those two documents can be considered together as a petition?

By Mr. Haggard: I object to that question.

By the Court: He may answer.

A. I am not going to answer that question unless I understand it.

Q. (Question repeated.)

A. Yes sir.

Redirect examination by Mr. Haggard:

Q. You offered to explain the appearance of those signatures on the first page instead of the last; can you explain how that occurred.

A. Yes sir.

Q. Please explain.

A. When this petition was given to me by the County Commissioners he says: "There is a petition and waiver together." If I remember right, he said: "When they sign this waiver, that means that people expecting damages to sign the petition that they want the road without damages." I don't think part of these people understood the difference and probably signed this petition expecting to sign the petition and not the waiver.

By Mr. Cramer: That is not within the general objection I object to that as involving a conclusion as to what probably went through the mind of someone else.

By the Court: Sustained.

By Mr. Cramer: I move to strike it out.

By the Court: Sustained.

Recross-examination by Mr. Cramer:

Q. After Mr. Hoffman had told you about the difference between the two documents, do you mean to

say that you presented it to the various farmers and didn't tell them what Mr. Hoffman said?

A. I did.

Q. You told them?

A. Yes sir, but as I said before they didn't understand it.

By Mr. Cramer: I object to that and move to strike it out, what they understood.

By the Court: Sustained.

At this time the taking of the testimony was adjourned until two o'clock P. M., at which time the court reconvened, and Mr. Shaw was recalled for further direct examination by Mr. Haggard.

T. A. Shaw, recalled as a witness on behalf of the defendants, was duly cautioned that he was still under oath and testified as follows:

Direct examination by Mr. Haggard:

Q. I call your attention again to this petition with reference to which you testified this morning, and which has been marked for identification No. 1; you stated you circulated the petition and procured the signatures; did you procure them all?

A. No sir.

Q. Do you know who procured the others?

A. My son.

Q. Do you know which ones you procured.

A. Yes, I think I go- about seven or eight signatures.

Q. At least seven?

A. I think so.

By Mr. Cramer: I desire to make a motion to strike out the testimony of the witness on the general ground as stated.

By the Court: The same ruling. Ruling will be reserved.

James A. Shaw, produced as a witness on behalf of the defendants, was duly sworn to testify the truth, the whole truth, and nothing but the ruth and testified as follows:

Direct examination by Mr. Haggard:

Q. I hand you a paper marked No. 1 for identification; do you recognize that?

A. Yes sir.

By Mr. Cramer: The same objection.

By the Court: The same ruling.

Q. Did you procure any signatures to that instrument?

A. Four, I think.

Q. Indicate which four.

A. Hall, Cook, Hood and Spaeth.

Q. At the time you procured the signatures of those gentlemen, did you make a statement to them as to the character of this petition, what it was?

By Mr. Cramer: I object to any conversations made in the absence of the Plaintiff here, and in the second place the question itself involves a conclusion in the answer.

By the Court: He may answer.

A. I merely said: "Do you want to sign the petition for this new road?"

Q. What, if any, replies did they make to that?

A. They said they were willing.

Q. What, if anything, did they do?

A. They signed it.

Cross-examination by Mr. Cramer:

Q. In what condition did you find this document at the time it was delivered to you?

A. I found it in an envelope.

Q. Whose names were on there?

A. I can't tell you for sure.

Q. Who gave it to you?

A. My father.

Q. Was John Mullin's name on it?

A. Yes, it was.

Q. Was it signed on one or both; you see how his name is signed to both; was it signed then to one or both?

A. I don't remember.

Q. When was it this document was given to you, and you procured the signatures you say you procured; in point of time, when was it?

A. In the spring, the later part of the winter and early in the spring.

Q. What year?
A. I don't know.
Q. You don't know that?
A. No sir, I don't.
Q. Do you remember what conversation you had with Cook and those other gentlemen?
A. I only asked them if they wanted to sign a petition for the new road. They all knew where it was and I had no occasion to explain where it was, and the*h* all said they would and they took it and signed it.
Q. That is your conclusion that they didn't have occasion to ask what it was, that they all knew?
A. They didn't asked me any questions.
Q. Did they ask you where to sign?
A. No, they didn't.
Q. Here are two documents and one says "Name" and "Post office" and here is John Mullin's name signed on the second page of the document, and they didn't ask you what they were signing or a thing, but all signed in the same place?
A. It looks like it.
Q. Didn't they?
A. Yes, they did, I guess.
Q. Don't you know?
A. Yes.
Q. There is no doubt about it in your mind?
A. None whatever.
Q. How much time did you spend with Mr. Cook at the time you obtained his signature?
A. It was in his barber shop and it was about 15 minutes.
Q. Where in his barber shop?
A. At Dwyer.
Q. How long has he lived at Dwyer?
A. I don't know.
Q. Did you know him before that?
A. I met him the first time that day.
Q. As to whether it was Mr. Cook then you don't know?
A. I do not.
Q. You merely walked into his barber shop then and did not have any conversation, but he merely signed the petition and you walked out; that is all you did?

A. These four were all there.

Q. This was the result of a pre-arrangement, was it?

A. No.

Q. You accidently found them there?

A. Yes sir, I went to Dwyer for that purpose.

Q. How many of them own real estate?

A. They all have homesteads.

Q. Mr. Cook included?

A. Yes sir.

Q. How long a time were you in this barber shop?

A. Possibly 15 or 20 minutes.

Q. And all you said was "Here is a petition, sign it," and that is all that was said?

A. I said: "Here is a petition for a new road; do you fellows want to sign it," and they took it.

Q. It took 15 minutes to say that and to sign four names?

A. Yes sir.

Q. You didn't tell them about any instructions that Mr. Hoffman had given your father?

A. No sir, I didn't know any.

Q. Your father hadn't conveyed that to you; did you hear his testimony about what Mr. Hoffman said?

A. Yes sir.

Q. He didn't tell you that when he gave this petition to you?

A. I simply knew it was a petition for a road and it didn't interest me very much, and he just wanted me to take it up there.

Q. Did he tell you where to go?

A. He said "Go to Dwyer and see if you can get those signers."

Q. Did he tell you any particular persons?

A. No sir, he left it to me.

Q. And you walked into the barber shop and found four men there?

A. I found a number there, but four had a right to sign it.

By Mr. Cramer: I make the same motion to strike this testimony out of the record.

By the Court: The same ruling.

Chester Thompson, produced as a witness on behalf of the defendants, was duly sworn to testify the truth, the whole truth, and nothing but the truth and testified as follows:

Direct examination by Mr. Haggard:

Q. I hand you an instrument marked No. 1 for identification; do you recognize that instrument?

By Mr. Cramer: The same objection.

By the Court: The same ruling.

A. Yes sir.

Q. This is your signature?

A. It is.

Q. In your hand-writing?

A. Yes sir.

Q. Do you know who presented that paper to you for signature?

A. Yes sir.

Q. Who?

A. J. A. Shaw.

Q. That is the old gentlemen or the son?

A. They were both there?

Q. What statement did they make to you as to the character of this instrument?

A. We had talked of this road coming through and he said he had a petition and I look- it over and said I was ready to sign it.

Q. What was your understanding at the time you signed it as to what the instrument was you were signing?

By Mr. Cramer: I object to what his understanding was.

By the Court: Sustained.

Q. What instrument did you think you were signing?

A. A petition.

Q. For what?

A. For a road.

Cross-examination by Mr. Cramer:

Q. When was this presented to you, Mr. Thompson?

A. In February or March.

Q. What year?

A. 1917.

Q. Where do you live?
A. I live about 12 miles north of here.
Q. How near the road?
A. Right on the road.
Q. The proposed road?
A. Yes sir.
Q. What is your business?
A. I am on a homestead farming.
Q. Where did you vote last?
A. In Missouri.
Q. You haven't voted since that time, have you?
A. No sir.
Q. Did you register since that time?
A. I wasn't here long enough to register.
Q. That was true at the time you signed this?
A. No. I have been here long enough to sign that petition.
Q. No, I mean you hadn't registered so as to qualify you to vote at the time you signed this?
A. No sir.

Frank N. Hall, produced as a witness on behalf of the defendants, was duly sworn to testify the truth, the whole truth, and nothing but the truth and testified as follows:

Direct examination by Mr. Haggard:

Q. I call your attention to this instrument marked No. 1 for identification; is that your signature on that?
By Mr. Cramer: The same objection.
By the Court: The same ruling.
A. Yes sir.
Q. Who presented that to you?
A. James Shaw.
Q. The young man?
A. Yes, sir.
Q. What statement did he make to you at the time as to what the character of the instrument was?
A. He said it was a new road and described it to me.
Q. What did he say this instrument was?
A. A petition.
Q. What did you understand to be the character of this instrument at the time you signed it?
A. A petition for a new road.

By Mr. Cramer: With reference to the testimony of Mr. Thompson I reserve the motion to strike the testimony.

Cross-examination by Mr. Cramer:

Q. When this petition was presented to you by Mr. Shaw where were you?

A. If I remember right, I was in my store.

Q. Where is that?

A. Next to the barber shop. I might have been in the barber shop; I won't say for sure.

Q. How long a time were you and Mr. Shaw together discussing this matter?

A. I couldn't say; perhaps 15 or 20 minutes.

Q. What was the conversation?

A. We talked the road over, where it was to run to Wheatland, and then I signed it.

Q. Did you read the document?

A. Yes, sir.

Q. Who had signed it before you, if anyone?

A. There had been several signers, I don't remember at the time, people who lived along the road.

Q. Do you know it to be a fact that they were people living along the road?

A. Yes, sir.

Q. Were you acquainted with all of them?

A. Yes, sir.

Q. Do you know whether or not John Mullin's signature was attached to that or not?

A. I don't know.

Q. Now, of course, I have no hesitancy in telling you that this is important; were the two documents together at the time they were presented to you?

A. I don't remember, but I think they were.

Q. If you were swearing to it as a fact, you wouldn't want to say under oath that the two documents were together?

A. No, I wouldn't want to swear to it, but I think they were.

Q. Let's kind of reason this out. You are a business man; what is your business?

A. Store keeper.

Q. And part of your business consists in giving orders, signing statements and bills and things of that character?

A. Yes, sir.

Q. So that it is not a new thing for you to execute a document of one or two pages?

A. No, sir.

Q. And contracts and things of that character—you know and I know in the ordinary run of affairs, the signatures are always appended at the end, or on the last page of the document, aren't they?

A. Not always, I don't think.

Q. It is so much so that you could state it as a general rule?

A. As a general rule, yes.

Q. Now just take this, in the ordinary course of events, you notice that this second page bears the signature of John Mullin, Wheatland Post Office and there are a long list of lines for ten persons to sign, and on the first page there are absolutely no lines there for signatures, except that there happens to be a blank space; don't you think, if the documents had been presented to you fastened together, that you would have signed on the last page where John Mullin's name appears?

A. I am not certain. If the other signatures were on there, I might have put it down there.

Q. As a prudent and experienced business man, you would be inclined to sign that portion of the document that you wanted to be bound by?

A. Sure.

Q. You notice that the first page relates to a waiver of claim for damages and donates certain right-of-way, and is not a petition, if considered by itself?

A. I signed it as a petition.

Q. I didn't ask you that. When you signed that, did you intend to waive your claim for damages and donate the right-of-way?

A. I signed is as a petition.

Q. What did you intend to do, sign the first page?

A. I intended to sign it so it would go before the County Commissioners. I didn't want any damages. I didn't sign it as a waiver, but I di-n't care.

Q. Was the question discussed whether it was or was not a waiver?

A. I didn't care.

Q. Did the thought come to your mind at that time whether it was or was not?

A. I didn't care so it didn't come to my mind.
Q. How old are you?
A. 27.
Q. When did you vote last?
A. At the last election.
Q. What are the facts; at the time you signed this were you a registered, qualified voter?
A. I had been here long enough to vote, five years, and I was registered.
Q. Did you notice, Mr. Hall, at the time this document was presented to you that there were two holes as if the original fasteners had been removed and new fasteners replaced?
A. I didn't notice that.
By Mr. Cramer: I make the same motion with reference to Mr. Hall's testimony, to strike it out.
By the Court: The same ruling.
By Mr. Haggard: I desire to introduce this paper in evidence for the purpose of calling the attention of the court to the nature of the instrument. The transcript does not really show that these two papers were filed together and I desire the original evidence for that purpose.
By Mr. Cramer: I have no objection to the paper, but I don't want any limitation, for the plaintiffs want it introduced for all purposes.
The paper was then marked by the reporter "Defendant's Exhibit No. 1," and is hereto attached and made a part hereof.
By Mr. Haggard: The defendants rest.

D. F. Romine, produced as a witness on behalf of the plaintiff in rebuttal, was duly sworn to testify the truth, the whole truth, and nothing by the truth and testified as follows:

Direct examination by Mr. Cramer:

Q. State your name?
A. D. F. Romine.
Q. Where do you live?
A. Six miles northeast,
Q. What is your business?
A. Farmer.

Q. I hand you herewith a document marked No. 1, on the first page of which appears a pencil signature "D. F. Romine"; is that your signature?

A. Yes sir, that is my name.

Q. Did you write it there?

A. No sir.

Q. On the date of March 21, 1917, or during that year, were you a qualified voter of Platte County, Wyoming?

A. No sir, I guess not.

Q. You had not registered?

A. No sir.

Q. You had not lived in the State long enough?

A. No sir.

Q. When did you come to the State?

A. I think along in April some time, 1916, I think it is.

Cross-examination by Mr. Haggard:

Q. Have you filed on a homestead in this County?

A. No sir; I own some land down here.

Q. You authorized the signing of your name to this petition, did you?

A. Yes sir.

By Mr. Cramer: To which I object.

By the Court: He may state the facts.

By Mr. Cramer: Let him state what he did or said.

A. (continued.) There were three of us—two cousins and myself—in on the place, and I told either of them, when the petition was presented, to sign it for the road, as we wanted the road.

Redirect examination by Mr. Cramer:

Q. That authorization, so-called, was not in writing?

A. No sir.

Q. You just told him by work of mouth?

A. Yes, I just told him by work of mouth to sign the petition, as we all wanted the road.

Miss Bessie Fitz, produced as a witness on behalf of the plaintiff in rebuttal, was duly sworn to testify the truth, the whole truth, and nothing but the truth and tesified as follows:

Direct examination by Mr. Cramer:

Q. State you- name?
A. Bessie Fitz.
Q. Where do you live?
A. Wheatland, Yyoming.
Q. What is your business?
A. County Clerk.
Q. As County Clerk, do you have control and charge of the books showing the registration of those who undertake to qualify to vote?
A. I do.
Q. Have you the registration books showing those who have registered for the year 1916?
A. I have.
Q. Was 1916 the last registration?
A. It was.
Q. Now will you ascertain is J. C. Spaeth is registered as a voter? What do your records show?

By Mr. Haggard: Objected to as immaterial and irrelevant. The Statute provides that the petition shall be signed by electors, not qualified electors, and the fact that he is not registered there does not determine whether or not he is an elector.

By the Court: The Constitution provides who is a qualified elector in residing in the County and State a certain length of time. I will permit the witness to answer, but I don't want to take up a great deal of time.

A. I do not find him registered.

By Mr. Cramer: The Plaintiff rests."

WYOMING "ROAD ACT."

Parts of Chapter 168, Compiled Statutes of Wyoming, 1910, as amended in 1913.

2516. PETITION FOR OPENING, CLOSING OR ALTERING ROAD. Any person desiring the establishment, vacation or alteration of a public road, shall file in the office of the county clerk of the proper county, a petition signed by ten or more electors of the county residing within fifteen miles of the road proposed to be established, altered, or vacated, in substance as follows:

To the board of the county commissioners of..... ..... county. The undersigned ask that a public road, commencing at ..... and running thence ..... and terminating at ..... be established (altered or vacated as the case may be).

With said petition shall be filed a list containing the names and also the known post office address of each person owning or having an interest in any land over which the proposed establishment, vacation or alteration of a public road is to be made. (L. 1913, Ch. 73, Sec. 1.)

2517. COUNTY BOARD MAY REQUIRE DEPOSIT. The board of the county, commissioners may require, in their discretion, that the petitioners for the establishment, alteration or vacation of a public road, shall deposit with the county clerk, a sufficient sum of money to defray the expenses of laying out, vacating or altering such road, and such expense, when so incurred, shall be paid out of such deposit. If the road is finally established, altered or vacated, the money so deposited shall be returned to the person who deposited the same.

2518. APPOINTMENT OF VIEWER. Upon the filing of such petition the board of the county commissioners at a regular or special meeting, or the chairman of said board, if in his judgment an emergency exists, shall appoint a suitable and disinterested elector of the county, who may be a member of the board of county commissioners, to examine into the

expediency of the proposed road, alteration or vacation thereof, and to report immediately.

2519. Viewer's Oath. The person so appointed shall be termed a viewer, and he shall be sworn by some person or officer authorized by law to administer oaths, before entering upon his duties, to faithfully and impartially discharge his duties, and he shall file his oath in the office of the county clerk. He shall not be confined to the precise matter of the petition, but may inquire or determine whether that, or any road, in the vicinity of the proposed or altered road, answering the same purpose is required.

2520. Convenience and Expense of Road to be Considered. In forming his judgment the viewer shall take into consideration both the public and private convenience, and also the expense of the proposed road.

2521. Viewer's Report. The said viewer shall report in writing to the board of the county commissioners, whether or not, in his judgment, said proposed road is practicable, and ought or ought not to be established, altered or vacated, as the case may be, stating the probable expense of the same, including damages to the property owners along the line thereof, the benefits thereto, and such other matters therein as shall enable the said board to act understandingly in the premises.

2522. Compensation. The board of the county commissioners shall allow the said viewer such reasonable compensation for his services as they shall determine and fix upon.

2523. Survey and Record of Road. If, upon considering and acting upon the report of the viewer, or otherwise, the board of the county commissioners shall decide to lay out such road, they shall cause the county surveyor to make an accurate survey thereof, if such survey is deemed necessary, and to plat and record the same in the book provided by the county for such purpose; and a copy of said plat and note of survey shall, without unnecessary delay, be filed in the office of the county clerk.

2524. Damages—When Filed. If the board of the county commissioners shall determine to establish, lay out or alter any road, they shall appoint a day, not less than thirty days after such determina-

tion, on or before which day all objections to the establishment, alteration or vacation of the proposed road, and claims for damages by reason thereof, shall be filed with the county clerk.

2525. NOTICE OF LOCATION OF ROAD TO BE PUBLISHED. Notice shall be published of the proposed location or alteration of any road for three successive weeks in three successive issues of some official newspaper published in the county, if any such there be, and if no newspaper be published therein, such notice shall be posted in at least three public places along the line of said proposed or altered road, which notice may be in the following form:

To all whom it may concern: The board of county commissioners have decided to locate (or alter, as the case may be) a road commencing at ..... in ..... County, Wyoming, running thence (here describe in general terms the points and courses thereof), and terminating at .....

All objections thereto or claims for damages by reason thereof must be filed in writing with the county clerk of said county, before noon on the..... day of ....., A. D. ....., or such road will be established (or altered) without reference to such objections or claims for damages.

.....*County Clerk.*

Dated ....., A. D. .....

The county commissioners shall cause a copy of the above notice to be mailed by registry mail to all persons owning lands or claiming any interest in any lands over or across which said road is proposed to be located or altered. The publication and posting of such notice shall be a legal and sufficient notice to all persons owning lands or claiming any interest in lands over which the proposed road is to be located or altered. (L. 1913, Ch. 73, Sec. 2.)

2526. CLAIMS FOR DAMAGES—WHEN BARRED. No objections or claims for damages shall be filed or made after the noon of the day fixed for filing the same, and if no objections or claims for damages are filed, on or before noon of the day fixed for filing the same, they shall be disregarded and not considered and shall be deemed to have been waived and barred.

2527. CONTINUANCE OF HEARING. If objections to the establishment, altering or vacating of the road, or if any claims for damages shall be filed, the further hearing of the application may be continued by the board until the matter can be properly disposed of.

2528. APPOINTMENT OF APPRAISERS. When claims for damages are filed, at the next regular meeting or special meeting of the board of the county commissioners, or as soon thereafter as may be practicable and convenient, the said board shall appoint three suitable and disinterested electors of the county as appraisers, to view the ground, on a day fixed by said board, and they shall report their doings in the matter and file their report in writing with the county clerk within thirty days after the date of their appointment, fixing the amount of the damages sustained by the claimants.

2529. APPRAISERS TO BE NOTIFIED OF APPOINTMENT. The county clerk shall cause each of the said appraisers, to be notified in writing, of his appointment, stating in said notice, *first,* the names of all appraisers, *second,* the names of all claimants for damages, on account of the location or alteration of the said road, with the amount of damages asked by each claimant, third, stating when their report must be filed, and *fourth,* the law relating to their duty as found in the next succeeding section. The county clerk shall also prepare suitable blanks, for such notice, for the oath of the appraisers and for the report, a proper number of which shall be forwarded by him to them.

2530. DUTIES OF APPRAISERS. The said appraisers shall, within ten days after receiving notice of their appointment, meet at some convenient place, on the line of said proposed or altered road, and take and administer to each other, an oath or affirmation to faithfully and impartially discharge their duties. They shall then view the ground, so far as they shall deem it necessary, and fix the amount of damages sustained by each claimant, after allowing for all benefits that may accrue to each claimant by reason of the location or alteration of the said proposed road. They, or a majority of them, shall as soon as practicable, after performing their said duties, make a report in writing to the

county clerk of their doings, stating that they were so sworn or affirmed as aforesaid, before performing their duties and fixing the amount of damages, if any, sustained by each claimant, after allowing and deducting for benefits, and where they have disallowed claims for damages, they shall so state in their report, and they shall immediately transmit their report, when made, to the county clerk. They shall, whenever they can conveniently do so, notify the claimants or their agents, of the place of their meeting and may hear such evidence as they may deem necessary in determining the amount of damages fixed by them. They are hereby authorized to administer oaths to each other, and to such witnesses as they may hear. If any one of them shall fail or refuse to perform his duty, the other two appraisers shall serve and shall appoint a suitable and disinterested elector in his place, who shall be within easy access, and he shall be sworn or affirmed in like manner as the other two appraisers, and the facts of such appointment and qualification shall be stated in said report to the county clerk. The said appraisers shall each receive for his compensation such reasonable sum as the board of county commissioners shall allow.

2531. Duties of County Board. At the next meeting of the county commissioners after the report of the appraisers has been filed, or as soon thereafter as may be practicable, the said board may hear testimony and consider petitions for and remonstrances against the establishment or alteration, as the case may be, of any road, or may establish or alter any road or may refuse so to do, as in the judgment of the said board, the public good may require, but in case there shall be no claim for damages filed, they shall act as speedily as possible in the matter. Said board may increase or diminish the damages allowed by the appraisers, and may make such establishment or alteration of any road, dependent or conditioned upon the payment, in whole or in part, of the damages awarded or expenses incurred in relation thereto by the petitioners for such road or such alteration of any road. If upon considering and acting upon the report of the viewers or otherwise, the board of county commissioners shall decide to lay out or alter any road, they shall

cause the county surveyor to make an accurate survey thereof, if such survey is necessary, and to plat the same in books to be provided by the county for such purpose, and the county clerk shall record in the same books opposite or near to such plat so that the same may be easily ascertained to be concerning the platted road, the proceeding of the said board in relation to the location, establishment or alteration of said road, in order to keep in a separate book a record of all the county roads of that county.

2532. EFFECT OF LOCATION ON PREVIOUS ROAD. The establishment of a new road on the route of a road already established, according to law, shall not vacate any road previously established, unless such vacation shall be ordered by the board of the county commissioners.

2533. REMOVAL OF FENCES. Whenever a public road is ordered to be established or altered, according to the provisions of this chapter, which shall pass through, or on enclosed lands, the road overseer, or other proper officer shall give the owner, agent or occupant of such other lands, notice in writing to remove the fences thereon, and if such owner, agent or occupant shall not move his fence, within thirty days thereafter, the same may be removed by the proper officer, and the road opened and worked; and such owner shall forfeit and pay twenty dollars for each day he shall permit his fence to remain after said thirty days, and shall pay all necessary cost of removal, to be collected by the proper officer, in any court of competent jurisdiction, for the use and benefit of the general county road fund.

2534. STREETS IN VILLAGES NOT INCORPORATED ARE PUBLIC ROADS. All public streets of towns or villages, not incorporated, are a part of the public roads, and all road overseers, or persons having charge of the same, in their respective districts or counties, shall work the same as provided by law or ordered by the board of the county commissioners of the proper county.

2535. ROADS ESTABLISHED BY CONSENT. Public roads shall be established without the appointment of a viewer, or without any other proceeding, than the

order of the board of county commissioners; Provided, That the written consent of all the owners of the land to be used for that purpose, be first filed in the office of the county clerk, and when it is shown to the satisfaction of the said board that the said road is of sufficient importance to be opened and traveled, they shall make an order establishing the same. The board of the county commissioners, when in their judgment such action shall be in the interests of economy or the public good, may purchase or receive donations of rights of way for a public road, or any alteration thereof, or any part thereof, from any and all persons along the route thereof, and declare the same open, whenever the consent of the owners of the land through which said proposed road or alteration shall run, has been obtained, either by the donations of land or when an amicable adjustment of the amount to be paid therefor has been made between such land owners and said board; and all roads or parts of roads or alteration of roads heretofore opened or made, by consent or adjustment of damages, without recourse to other proceedings, are hereby declared to be public roads, the same as if such roads had been legally opened, or said alterations legally made.

2536. Appeals from County Boards. Any applicant for damages claimed or caused by the establishment or alteration of any road, may appeal from the final decision of the board of the county commissioners to the district court of the county, in which the land lies, for the taking of which for a public road, damages are asked; but notice of such appeal must be made to the county clerk, within thirty days after such decision has been made by the said board, or such claim shall be deemed to have been abandoned. No appeal shall be allowed, unless a good and sufficient bond be given by the party appealing, in a sum not less than fifty dollars to cover costs. Said bond to be approved by the clerk of the district court.

2537. Duties of county clerks on appeals. The county clerk shall, within ten days after the notice of an appeal as provided for in the preceding section is filed in his office, make out and file in the of-

fice of the clerk of the district court, in his county, a transcript of the papers on file in his office, and the proceedings of the board in relation to such damages.

2538. DAMAGES ON APPEAL—COSTS. The amount of damages to which the claimant shall be entitled on such appeal shall be ascertained in the same manner as in a civil action, and the amount so ascertained, if any, shall be entered of record, but no judgment shall be entered therefor. The amount thus ascertained shall be certified by the clerk of the court to the county clerk who shall thereafter proceed as if such amount had been allowed by the board of the county commissioners to the claimant as damages. If the appellant shall fail to recover an amount exceeding fifty dollars above the amount allowed to him by the board of the county commissioners, he shall pay all costs of the appeal.

BRIEF OF THE ARGUMENT.

I.

The Wyoming "Road Act" contravenes the "due process" provision contained in the Fourteenth Amendment to the Constitution of the United States.

(*a*) One of the essential elements of due process is an opportunity to be heard.

Stuart v. *Palmer*, 74 N. Y. 183.
Security Trust and Safety Deposit Vault Co. v. *Lexington*, 203 U. S. 323.
Coe v. *Armour Fertilizer Works*, 237 U. S. 413.
Central of Georgia R. Co. v. *Wright*, 207 U. S. 127.
Londoner v. *Denver*, 210 U. S. 373.
Galpin v. *Page*, 18 Wall 350.
The Trustees of Dartmouth College v. *Woodward*, 4 Wheat. 519.
Bradstreet v. *Neptune Insurance Co.*, 1 Sumn. 600.
Hovey v. *Elliott*, 167 U. S. 409.
Roller v. *Holly*, 176 U. S. 398.

(*b*) It is not enough that the aggrieved party may by chance have notice or that he may as a matter of favor have a hearing.

Coe v. *Armour Fertilizer Works, supra.*
Security Trust and Safety Deposit Vault Co. v. *Lexington, supra.*
Central of Georgia R. Co. v. *Wright, supra.*
Stuart v. *Palmer, supra.*

(*c*) This provision for an appeal does not save the statute; such a provision satisfies the constitutional mandate only when the procedure for appeal is made effective by actual or constructive notice of the fact and nature of the determination to be appealed from.

(1) The Wyoming statute does not provide for any public record of the final determination of the Board.

Opinion of Supreme Court of Wyoming in this case (Trans. 105, 113).

(2) The only cases in which a right of appeal has been deemed to satisfy the constitutional mandate are cases in which notice of the decision to be appealed from is required by law or a public record of the decision accessible at a definite or determinable time, is provided for as a means of information.

Bragg v. *Weaver, et al.*, 251 U. S. 57.

Lent v. *Tillson*, 140 U. S. 316.

Wells Fargo & Co. v. *State of Nevada*, 248 U. S. 165.

Winona and St. Peter Land Co. v. *Minnesota*, 159 U. S. 526.

(3) Provisions for appeal which do not include timely notice of the fact and nature of the determination to be appealed from do not satisfy the constitutional mandate.

Savannah F. & W. Ry. Co. v. *Mayor etc. of Savannah*, 96 Ga. 680.

McGavock v. *City of Omaha*, 40 Neb. 64.

(*d*) The State of Wyoming is in full accord with the doctrine that notice and an opportunity to be heard should be specifically required by law in all eminent domain proceedings.

Sterritt v. *Young*, 14 Wyo. 146.

See also Private Road Act, Comp. Stats. Wyo. 1910, Sec. 2540.

II.

The entire proceedings were void for want of a sufficient petition.

(*a*) A sufficient petition is jurisdictional.

Opinion in this case (Trans. 105, at 110).

Toledo, etc. Ry. Co. v. *Detroit, L. & N. R. Co.*, 62 Mich. 564.

In re Rochester Elec. Ry. Co., 123 N. Y. 351.

Lesieur v. *Custer County*, 61 Neb. 612.

In re Montgomery, 48 Fed. Rep. 896.

Smith, Jr., et al. v. *C. & W. I. R. R. Co.*, 105 Ill. 511.

(*b*) The petition in this case was signed by only one person; the waiver which was attached was signed by eleven persons, but in terms and in substance the waiver is not a petition.

See Trans. pp. 15, 16.

(*c*) There is a distinct legal difference between a petitioner and a person who merely releases damages. A petitioner under the Road Act is a *quasi* party and assumes certain conditional obligations.

Comp. Stats. Wyo. 1910, Secs. 2517, 2531.

(d) The persons who signed the waiver did not *sign* the petition. When a statute requires that an instrument must be *signed*, the legal intention is that the instrument shall be *subscribed*.

Comp. Stats. Wyo. 1910, Sec. 2516.
Ashbrook v. *Roberts*, 82 Ky. 298.
Wade v. *State*, 22 Tex. App. 256.
Catlett, et al. v. *Catlett*, 55 Mo. 330.

III.

Manifest error was committed in permitting the Board to introduce oral evidence in modification and amplification of the test of the waiver.

(*a*) Error was assigned on the rulings of the Court as to the introduction of oral evidence offered for the purpose of showing that the waiver was intended to be a petition.

(1) Error was assigned on the rulings of the Court as to the evidence of T. A. Shaw (Trans. 129, 130). The witness was one of the persons who solicited signatures on the waiver. He was asked: "What, if any, statement did you make to these persons whose signatures your procured to that instrument, as to its character, when you solicited their subscription". An objection was overruled and the witness answered: "If I understand the question, I presented this to the people and asked them if they were willing to sign this in regard to opening up a road in this part of the county, and they all said they were willing to have the road opened up."

(2) Error was also assigned on the rulings of the Court as to the evidence of James A. Shaw. (Trans. 136.) James A. Shaw also circulated the waiver. He was asked: "At the time you procured the signatures of these gentlemen did you make a statement to them as to the character of this petition, what it was?" Objection being overruled, the witness answered: "I merely said, 'Do you want to sign the the petition for this new road?'"

(*b*) Evidence tending to modify or amplify the text of a written instrument is highly improper.

DeWitt et al. v. *Berry, et al.*, 134 U. S. 306.

Green v. *C. & N. W. Ry. Co.*, 92 Fed. Rep. 783.

ARGUMENT.

I.

The Wyoming "Road Act" contravenes the "due process" provision contained in the Fourteenth Amendment to the Constitution of the United States.

The Fourteenth Amendment provides (in part) as follows:

> "Nor shall any State deprive any person of life, liberty or property without due process of law."

The Wyoming Act providing for the establishment of public roads, herein referred to as the "Road Act," has many features which distinguish it from similar statutes in other states; and indeed from the private road act of the same state. Proceedings to establish public roads are originated by a petition. Thereupon a viewer is appointed to examine the matter, and if his report is favorable, the County Board gives public notice that the Board has decided to locate a road. This notice must be given by publication in a newspaper or by posting, and also by mail to the land-owners. We do not question the manner provided for the giving of notice but (as will presently be pointed out) we contend that the notice is wholly ineffectual to satisfy the constitutional requirement.

The statute further requires that the Board shall also appoint a day not less than thirty days later, on or before which date objections and claims for damages may be filed. That part of the statute which provides for the

giving of notice does not expressly require that the notice shall specify the date appointed for filing claims. A form of notice is contained in the statute and the form as thus set forth contemplates that notice of the filing date is to be given, but the employment of the statutory form is permissive and not mandatory.

Assuming, however, that this particular defect in the statute is unconsequential, the only facts of which land owners are advised by the notice are that the County Board has determined to establish a public road in a specified location, and that objections and claims for damages must be filed within a specified time. *The statute does not provide for nor contemplate a hearing upon the date appointed for filing of claims.* The statute is in effect a statute of limitations, and nothing more. It fixes a time within which claims may be made, but it makes no provision whatever for an opportunity to be heard upon them.

If claims for damages are filed, the Board is required to appoint appraisers. Separate appraisers are not appointed for each several claim but if any claims are made, one group of appraisers is appointed for all claims filed in the same proceeding. The statute contemplates that these appointments should be made with all convenient speed; the provision is that when claims are filed, the appraisers shall be appointed "at the next regular meeting or special meeting of county commissioners, or as soon thereafter as may be practicable or convenient." It thus appears that under the provisions of this section of the Act, appraisers might be appointed and conclude their official duties before all timely claims had been received. Very likely the desire was to provide for successive appointments in such cases, but no such provision is made.

It further appears that a claimant may not know when the appraisers are appointed; they *need not be* appointed at the next regular meeting, and a claimant has no means of knowing when it may be "practicable or convenient" to appoint them.

The appointment of appraisers may be entirely *ex parte*. Claimants are not entitled to any notice whatever; in fact, without extraordinary diligence, they have no means of finding out when the appointment may be made. Up to this stage in the procedure, they have had no opportunity whatever to be heard and no voice whatever in the selection of the appraisers.

Within ten days after their appointment the appraisers are required to meet "at some convenient place on the line" of the proposed road. They are not required to give any notice of the date of their meeting; they are not required to give notice of the place of their meeting; and they have the whole line of the proposed road from which to select a place. Certainly there is no opportunity at this stage for a complainant or objector to be heard.

Having met and organized, the appraisers are required to view the ground "so far as they deem it necessary" and fix the amount of damages sustained by each claimant with due allowance for benefits, whereupon their written report is filed with the county clerk. These are all of the statutory duties required of the appraisers.

It is true that they have *power* to notify the claimants of the place of meeting and that they may "hear such evidence as they deem necessary"; but these requirements are entirely permissive and in no sense mandatory. The appraisers have it in their power to afford an opportunity for a hearing, but they are not bound to afford such an opportunity. We shall presently refer to numer-

is decisions in which such a provision has been held to e entirely insufficient.

At this stage the situation is that claims are on file ith the County Board and an *ex parte* report of ap- raisers who have been appointed *ex parte* is also on le. There is as yet no opportunity whatever to be eard either by the appraisers or by the Board.

At the next meeting of the Board after the report of he appraisers is filed, "or as soon thereafter as may e practicable" the Board may hear and consider peti- ions and remonstrances, and is empowered thereupon o establish the road. But again there is no provision whatever for notice to anyone, nor any *requirement* that parties shall be heard.

It thus appears that the entire proceeding from in- eption to conclusion may be wholly *ex parte* without ny opportunity on the part of land owners to submit heir evidence or present their arguments. They are en- itled to notice that the establishing of a road is con- emplated, and has in fact been tentatively determined upon, but they are not entitled to be heard in the selec- ion of the appraisers; they are not required to be no- ified of the time and place of meeting of the appraisers; and they may have no notice whatever of the meeting of the Board in which their property rights are finally passed upon. The notice which the law provides for gives them none of this essential information. It gives them an opportunity to plead, but it does not give them an opportunity to attend upon the hearing. The prin- cipal proposition in this case is that the constitutional guaranty *includes an opportunity to be heard.*

This question was involved in *Stuart* v. *Palmer,* 74 N. Y. 183. The legislature of New York, by an Act passed in 1869, located a road in Kings County. The Act provided that the Supreme Court should appoint

three freeholders to lay out the road and award damages. The Act provided for two assessments by the commissioners; one for the damages awarded for the taking of the land and another for the expense of grading. The first award was to be made after due notice and was subject to confirmation by the Supreme Court. The assessment for construction expenses could be made without any notice to or hearing of any person, and the assessments for construction purposes were made a part of the annual taxes and secured by a lien upon the lands. The proceeding in the reported case was an action to vacate one of these assessments. The case was decided in the Court of Appeals in 1878. Judge Earl, writing the opinion said (in part) at page 188:

> "I am of opinion that the Constitution (of New York) sanctions no law imposing such an assessment, without a notice to, and a hearing or an opportunity of a hearing by the owners of the property to be assessed. It is not enough that the owners may by chance have notice, or that they may as a matter of favor have a hearing. The law must require notice to them, and give them the right to a hearing and an opportunity to be heard. It matters not, upon the question of the constitutionality of such a law, that the assessment has, in fact, been fairly apportioned. The constitutional validity of law is to be tested, not by what has been done under it, but by what may, by its authority, be done."

And again (page 191):

> "A hearing or an opportunity to be heard, is absolutely essential. We cannot conceive of due process of law without this."

The Court held that the statute was unconstitutional and void.

Stuart v. *Palmer* was cited with approval by this Court in *Security Trust and Safety Vault Company* v. *Lexington*, 203 U. S. 323, and in *Coe* v. *Armour Fertilizer*

Works, 237 U. S. 413, in which case the above language was quoted with approval.

In *Central of Georgia R. Co.* v. *Wright,* 207 U. S. 127, the action was a proceeding to enjoin certain tax levies. This Court described the legislative machinery as follows (page 138):

> "Under the scheme provided for, if the property is withheld from return, the comptroller, without notice or opportunity for hearing, must proceed to value the property, and his valuation is final and conclusive, unless the taxpayer can show—a very unlikely contingency—that the taxing officer has acted in bad faith in making the assessment."

Of this statute the Court said (page 141):

> "Reluctant as we are to interfere with the enforcement of the tax laws of a state, we are constrained to the conclusion that this system does not afford that due process of law which adjudges upon notice and opportunity to be heard, which it was the intention of the 14th amendment to protect against impairment by state action."

In *Londoner* v. *Denver,* 210 U. S. 373, this Court stated the rule as follows (page 385):

> "In the assessment, apportionment, and collection of taxes upon property within their jurisdiction, the Constitution of the United States imposes few restrictions upon the states. In the enforcement of such restrictions as the Constitution does impose, this court has regarded substance, and not form. But where the legislature of a state, instead of fixing the tax itself, commits to some subordinate body the duty of determining whether, in what amount, and upon whom it shall be levied, and of making its assessment and apportionment, due process of law requires that, at some stage of the proceedings, before the tax becomes irrevocably fixed, the taxpayer shall have an opportunity to be heard, of which he must have notice, either personal, by publication, or by a law fixing the time and place of the hearing."

These cases and others cited under the next head, illustrate,—rather than determine,—the fundamental rule that due process includes an opportunity to be heard.

In his argument in the *Dartmouth College case* (4 Wheat. 519) Webster defined "due process of law" as a proceeding "which proceeds upon inquiry and renders judgment only after trial." The right to be heard is as essential as the right to notice; indeed the right to notice is valueless unless an opportunity to be heard is also afforded. Mr. Justice Story said: "It is a rule founded on the first principles of natural justice, that a party shall have an opportunity to be heard in his defense before his property is condemned." (*Bradstreet* v. *Neptune Insurance Co.*, 3 Sumn. 600.)

This Court in *Galpin* v. *Page*, 18 Wall. 350, said (page 368):

> "It is a rule as old as the law, and never more to be respected than now, that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, and has been afforded an opportunity to be heard. Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and never can be upheld where justice is justly administered."

In *Hovey* v. *Elliott*, 167 U. S. 409, this Court, quoting from the opinion of Mr. Justice Field in *Windsor* v. *McVeigh*, 93 U. S. 274, said (page 414):

> "That there must be notice to a party of some kind, actual or constructive, to a valid judgment affecting his rights, is admitted. Until notice is given, the court has no jurisdiction in any case to proceed to judgment, whatever its authority may be, by the law of its organization, over the subject matter. But notice is only for the purpose of affording the party an opportunity of being heard upon the claim or the charges made; it is a summons

to him to appear and speak, if he has anything to say, why the judgment sought should not be rendered. A denial to a party of the benefit of a notice would be, in effect, to deny that he is entitled to notice at all, and the sham and deceptive proceeding had better be omitted altogether. It would be like saying to a party, 'Appear and you shall be heard;' and, when he has appeared, saying, 'Your appearance shall not be recognized, and you shall not be heard.' "

We have pointed out that the statute now in question presents a situation to which this language is expressly applicable. The statute does provide for a certain notice, but the notice provided for is not a notice to appear and be heard. It is a notice of the time within which claims may be filed; on the return day of the notice the Board may take no action whatever. The time for action by the Board is left entirely to the discretion of the Board, which may be exercised with no regard whatever to the return day of the notice. Claims for damages having been filed the Board may appoint the appraisers at any *regular or special* meeting. Claimants have no means of knowing when the Board is to meet.

It is true that the Board is required by the statute to fix a date upon which the appraisers are to meet, but in this matter also there is no provision for notice to any claimant, and the day may have been appointed and the appraisers may have met before a claimant can ascertain the date of the meeting. It is also to be noted that the Board is not required to fix the place appointed for the meeting of the appraisers, and it might well be that the actual place of meeting would be remote and inaccessible. The whole line of a road which is merely projected, across the wide limits of a western county, is a vague assignation.

When the appraisers have reported,—of which also no notice is required,—the Board is empowered to take

final action. It may act at its next meeting, which may occur immediately, or it may postpone action until action "is practicable."

In *Roller* v. *Holly*, 176 U. S. 398, this Court held that five days' notice to a nonresident of a suit to foreclose a lien upon land was insufficient to constitute reasonable notice or due process of law. Under the Wyoming statute it might readily occur that an interval of less than five days would actually elapse between the return of the appraisers' report and the final action of the Board; and this is true even though a claimant were fortunate enough to be advised that the appraisers' report had been filed.

But the outstanding fact is that notice of none of these proceedings is required by the statute. Land owners are entitled to notice that their land is about to be appropriated for public use, but they are not afforded any opportunity to be heard. Quoting again from *Londoner* v. *Denver, supra,* we direct the attention of the Court to this very appropriate language (page 386):

> "If it is enough that, under such circumstances, an opportunity is given to submit in writing all objections to and complaints of the tax to the Board, then there was a hearing afforded in the case at bar. But we think that something more than that, even in proceedings for taxation, is required by due process of law. Many requirements essential in strictly judicial proceedings may be dispensed with in proceedings of this nature. But even here a hearing, in its very essence, demands that he who is entitled to it shall have the right to support his allegations by argument, however brief; and, if need be, by proof, however informal."

It is not enough that the aggrieved party may by chance have notice, or that he may as a matter of favor have a hearing.

This proposition is amply supported by the authorities above referred to. The question was expressly passed upon in *Stuart* v. *Palmer, supra,* where it was said that the law must *require* notice.

In *Coe* v. *Armour Fertilizer Works, supra,* this Court said (237 U. S. 413, 424):

> "Nor can extra-official or casual notice, or a hearing granted as a matter of favor or discretion, be deemed a substantial substitute for the due process of law that the Constitution requires."

And the Court then quoted from *Stuart* v. *Palmer, supra,* as follows (page 424):

> "It is not enough that the owners may by chance have notice, or that they may as a matter of favor have a hearing. The law must require notice to them, and give them the right to a hearing and an opportunity to be heard."

In *Security Trust and Safety Deposit Vault Co.* v. *Lexington,* 203 U. S. 323, this Court again said (page 333):

> "If the statute did not provide for a notice in any form, it is not material that as a matter of grace or favor notice may have been given of the proposed assessment. It is not what notice, uncalled for by the statute, the taxpayer may have received in a particular case that is material, but the question is, whether any notice is provided for by the statute."

And again in *Central of Georgia R. Co.* v. *Wright,* 207 U. S. 127, (quoting from the *Security Trust* case) this Court, at page 138, said that

> "this notice must be provided as an essential part of the statutory provision, and not awarded as a mere matter or favor or grace."

These authorities amply warrant the assertion that it is immaterial whether a claimant is in fact afforded an opportunity to be heard, and it is likewise immaterial whether the Board and the appraisers in their discretion *may* give notice. The constitutional right to be heard is absolute, and not subject to the will of any court or administrative body. It would be an absurdity to say that the constitutional requirement is satisfied by conferring power to give or withhold notice as an administrative body may prefer. The right to be heard must be unequivocally and absolutely secured by law.

The Road Act contains a provision (Sec. 2536) which provides that

> "Any applicant for damages claimed or caused by the establishment or alteration of any road, may appeal from the final decision of the board of the county commissioners to the district court of the county, in which the land lies, for the taking of which for a public road, damages are asked; but notice of such appeal must be made to the county clerk, within thirty days after such decision has been made by the said board, or such claim shall be deemed to have been abandoned."

We are perfectly aware that this Court has decided in certain cases that an adequate provision for appeal may amount to the due process of law which the Constitution requires. Our position is that the Wyoming Road Act does not fall within the principle of these cases.

If a right of appeal is to have such a legal effect it must be an effective right of appeal. One of the essentials of an effective right of appeal,—particularly where the right of appeal is limited in time,—is notice of the order which is to be appealed from. The Legislature of Wyoming necessarily recognized that a reasonable time for this purpose would in any event be essential; but the Legislature wholly omitted to provide for

any notice or means of notice to the land owner of the fact that his time for appeal had begun to run. It is entirely conceivable and possible that under the provision of the Wyoming Road Act a land owner might not know of the final action of the Board until the time for appeal had expired. It is not only that the statute provides for no notice to him; he may have no means of informing himself by inquiry.

In the opinion of the Supreme Court of Wyoming in the present case (Tr. 105, 113) the Supreme Court of Wyoming expressly said:

> "The statute does not provide what shall constitute the record of the proceedings of county commissioners in highway cases. No judgment roll is made up. * * *"

This circumstance creates a peculiar and amazing situation. The Board may lawfully meet, and reach a final decision; but the law provides no public record from which the decision of the Board may be ascertained. A claimant is not only without notice; he may be without means of information. The absurdity of this situation is so manifest that we should hesitate to urge it if the Supreme Court of Wyoming had not plainly declared that this is the condition of the law.

We freely grant that the constitutional requirement is satisfied by a certain and undeniable right to a hearing, at whatever stage in the proceedings a hearing may be provided for; and that in a proper case this principle is satisfied by a certain and undeniable right to a hearing upon appeal; but the constitutional requirement is satisfied only when the right to a hearing upon an appeal is so safeguarded that in the lawful operation of the statute it cannot be denied.

The essential protection required in such a case may be provided in both or either of two ways. It may be

provided by notice to the aggrieved party that an order adverse to him has been entered, or it may be provided by notice contained in the general law or given specifically of the hearing in which his rights are to be determined followed by a public record accessible to him of the result of the hearing. In the first instance, whatever may have previously happened, the notice of the determination puts him upon inquiry. In the latter case he has notice that puts him on inquiry in a particular place at a particular time. In either event he is assured of the knowledge or the means of knowledge.

But the constitutional requirement is satisfied only when the law assures him of actual or constructive notice. When the law contains no such provision the constitutional requirement is not satisfied.

That the foregoing is an accurate statement of the rule is demonstrable from all of the cases in which the general question has been considered by this Court.

Bragg v. *Weaver,* 251 U. S. 57, was a road case in which the statutes of Virginia were called in question. The Court held, not that *any* provision for appeal would constitute due process, but that the particular provision for an appeal contained in the Virginia statute satisfied the "due process" rule.

Having stated the general principle, the Court analyzed the Virginia statute. The statutory procedure is described in the opinion as follows (page 60):

> "The same statute, in clause 5, deals with the compensation to be paid for lands taken for roadways, and in that connection provides that the proprietor or tenant, if dissatisfied with the amount allowed by the supervisors, 'may of right appeal to the circuit court of said county, and the said court shall hear the matter *de novo*' and determine and certify the amount to be paid. And general statute (Section 838), which regulates the time and

> mode of taking appeals from decisions of the supervisors disallowing claims in whole or in part, provides that the claimant, if present when the decision is made, may appeal to the circuit court within thirty days thereafter, and, if not present shall be notified in writing by the clerk and may appeal within thirty days after service of the notice."

Of this statute the Court said that "it is apparent therefore that special care is taken to afford him (the land owner) ample opportunity to appeal and thereby to obtain a full hearing in the Circuit Court."

It will be observed that the opinion in the *Bragg* case demonstrates the precise question to be, not whether there is *any* provision for an appeal, but whether the *particular* provision adequately protects the rights of the aggrieved party. The Virginia statute clearly provides such protection. If the claimant is present when a decision is made, he has thirty days in which to appeal; if he is not present he is entitled to an appeal at any time within thirty days after notice has been served upon him. Care was taken that he should be advised of the adverse determination affecting his property rights; and his right to be heard was preserved until after he had been so advised. There is no such provision in the Road Act of Wyoming.

Lent v. *Tillson*, 140 U. S. 316, involved the consideration of a statute of the State of California providing for the widening of a street in San Francisco. The statute provided that the commission therein created should publish notice of the intended widening and receive protests, and the commission was further required to prepare and file a written report showing the description and actual cash value of the land to be taken and the damages as found by the commission. The statute further "directed such report, as soon as completed,

to be left at the office of the Board daily, during ordinary business hours for the free inspection of all persons interested, and notice of the same being open for inspection at such time and place published by the Board daily, for twenty days, in two daily newspapers printed and published in the city and county." The statute then provided for an appeal by the interested parties to the County Court where a hearing was obtainable.

This Court held that the particular provisions contained in the California statute adequately safeguarded the property owners.

As will be observed, by the statute in this case,—which was a public law of which all parties were bound to take notice,—the decision of the commission was required to be deposited in a place of public record and to be there available for inspection by all persons, and public notice of the fact that it was so deposited and so available was provided for. There is no such provision in the Wyoming statute; on the contrary, as the Supreme Court of Wyoming has said, there is no provision of law for the recording of the proceedings of a county board in road cases; and no land owner is entitled by law to notice that a determination adverse to his interests has been made.

Under the California statute all parties interested were publicly informed that the report had been filed and was accessible at a specified place; under the Wyoming statute no place of record is provided for and no notice need be given to anyone.

Wells Fargo & Company v. *State of Nevada,* 248 U. S. 165, involved a Nevada statute. The case was an action to enforce a tax levy. It was contended on behalf of the taxpayer that the statute failed to satisfy the constitutional requirement because the valuation by

the state board was made without notice to the taxpayer and without according him an opportunity to be heard. Disposing of the contention this Court said (page 168):

> "In Nevada the mode of enforcing a tax such as this is by a judicial proceeding wherein process issues and an opportunity is afforded for a full hearing. Only after there is a judgment sustaining the tax is payment enforced."

The taxpayer was not deprived of any property until there had been a judicial proceeding predicated on a summons and affording a full opportunity to be heard.

This procedure is far removed from the procedure prescribed by the Wyoming statute.

Winona and St. Peter Land Company v. *Minnesota*, 169 U. S. 528, was a tax case. The statute required that between June 1st and June 15th of each year the county auditor should file in the office of the clerk of the District Court a list of delinquent taxes, showing on such list a description of the land and the name of the owners if known. The filing of this list is declared by law to be considered equivalent to the filing of a complaint *in rem* against the properties subject to the delinquent taxes. Publication is then to be made and within twenty days after the last publication any person having an interest in any of the land may file an answer in the office of the clerk of the court; and thereupon the Court shall hear and determine the issues thus made up.

This Court held that the procedure provided for in the statute satisfied the constitutional mandate.

This case was identical in principle with the *Lent* case. The tax statute was a public law of which all persons were bound to take notice. The assessment was required to be lodged in a public office at a particular time, and all persons were publicly notified that it was

so lodged, with ample time thereafter in which to invoke a judicial determination.

Again there is a material distinction. The Wyoming Road Act makes no provision for the depositing of the board's decision in a place of public record and no notice is required of the fact that a decision had been reached. The decision may be made at any time and no public law guides interested persons to a definite time and place of inquiry.

These particular cases are referred to because they are cases cited by this Court in *Bragg* v. *Weaver* (*supra*), as illustrative of the proposition that the right of appeal may supply the constitutional requirement. On examination it clearly appears that they sustain the distinction above noted, viz., that the right of appeal satisfies the constitutional requirement only when actual or constructive notice of the appealable decision is required or a certain and timely means of information is afforded.

The Legislature of Wyoming has recognized the necessity of these requirements in the Private Road Act of that state. The sections of the general law particularly commented on herein are the sections providing for the establishment of public roads. There is another section (Section 2540) which prescribes the procedure to be followed in the establishment of private roads. Under that section an applicant for the establishment of a private road is required to give thirty days' notice to the owner of the lands over which the road is to be opened of the time when application will be made to the Board "at which time all parties interested *may appear and be heard* by said Board." If upon the hearing the Board shall determine that the road shall be opened, the Board is required to appoint three appraisers to meet at a time appointed by the Board; and if for any

reason the appraisers are unable to meet upon the day appointed, they may fix some other date "but shall be required to give notice in writing to the owner or resident agent or occupant of said lands over which said road is proposed to be laid of the time and place where such viewers will meet, at least ten days before viewing such road, at which time and place all persons interested *may appear and be heard by said viewers.*" The viewers then proceed to locate the road and report their doings to the County Board.

This statute is of especial interest in that it indicates a substantial advance in the science of legislation. Of course, there is no reason in principle why the procedure should differ; in both cases the constitutional rights of the land owner are the same. But in the Private Road Act the provision for a hearing is mandatory, and definite notice must be gven to the land owner to attend at a particular time and place where an opportunity to be heard will be afforded him. The Public Road Act, on the contrary, contains no provision for notice nor any mandatory provision for a hearing either by the appraisers or by the Board.

We do not say that a constitutional question is necessarily determined by usage; but we do say that the uniform practice of the state legislatures in all instances referred to, excepting only the Public Road Act of Wyoming, is powerfully suggestive of the true construction of the due process clause as applied to statutes of this character. We say, furthermore, that the opinion in *Bragg* v. *Weaver*, and the opinions in the cases therein referred to, indicate that this Court would not have sustained the various statutes there in question if they had not contained the protective provisions which we have pointed out. Each of these opinions clearly indicates that if the protective provisions had been absent,

the judgment of this Court would have been against the constitutionality of the statute.

The reason of the thing is necessarily in accord with our contention. It must necessarily be admitted that without the right of appeal the Wyoming Road Act is unconstitutional. Whether the right of appeal saves it depends on the procedure which precedes the time of appeal. There is an authoritative concession that no record need be made of the determination of the Board. How can a land owner find out what the determination is? Where is he to inquire? How speedily is he assured of the information? The Board may act today, adjourn for a month, and its members may scatter to the remotest parts of the county. The county clerk is not required to keep a record and he may have no record. This is an amazing fact, but as we have seen, it is the fact. No means of information is certainly afforded to any interested party, and the time for appeal may actually expire before he can inform himself.

All of this is true even though the interested party has knowledge of the date upon which the Board is to make its determination. But there is another consideration. An interested party may not know when the Board will arrive at its determination. The only information which the land owner is certainly entitled to is the information that the location of a road is in process. He may not know, nor have means of knowledge, whether the Board has appointed appraisers, or whether the appraisers have completed their official duties. He has no certain means of knowledge whether the appraisers' report has been returned to the Board, and the Board may have acted and adjourned before he can make inquiry. All or a considerable part of his thirty days may have elapsed before he is able to ascertain that a decision has been made.

This right for an appeal may in fact be a very empty right.

It is no answer to say that these hypotheses are unlikely. Constitutional guaranties are not to be satisfied by the presumption that property rights will always have the benefit of good fortune and fair dealing. On the contrary, they are expressly designed to protect against the contrary situation. The test is not whether **a law,** when ably and considerately administered, will work injustice, but whether the law allows such a latitude that injustice may be done within its letter.

It seems inconceivable that this loosely drawn and imperfect statute should be deemed to satisfy the constitutional mandate.

The case is like *Savannah, F. & W. Ry. Co.* v. *Mayor, etc. of Savannah,* 96 Ga. 680. A provision in a charter covering street improvements provided that the mayor and aldermen might appoint assessors to fix the damages sustained by land owners in consequence of the opening or extension of streets and empowered the council to enforce the award. It did not provide for any notice to the land owners as to the appointment of the assessors, allow such owners any voice in the selection of assessors, or give the land owners any opportunity to be heard by the assessors upon the question of compensation.

The Supreme Court of Georgia expressed the opinion that the failure to provide for notice to the land owners would not of itself alone be fatal to the constitutionality of the charter because the action taken by the assessors could never become finally binding until after a legal hearing of some sort had been allowed the land owners as to the amount of compensation. And proceeding, the Court further said (page 682):

> "We are therefore prepared to say that, notwithstanding this failure, we could sustain the section,

the true interests of the State of Wyoming and its people are on the side of the plaintiffs in error.

Notwithstanding the decision which is now here for review, the Supreme Court of Wyoming has taken a very enlightened position toward the very question now under discussion. In *Sterritt* v. *Young*, 14 Wyo. 146, an injunction was sought against the construction of an irrigation ditch and the irrigation statute was directly called in question. On an argument on the pleadings, the trial Court was of the opinion that a difficult constitutional question was involved, and the case was certified to the Supreme Court for final determination whether the Irrigation Act was constitutional. The proceeding required by the statute is described by the Supreme Court of Wyoming as follows (page 148):

> "The proceeding is to be initiated by the filing of a petition by the applicant with the County Commissioners of the County in which the lands sought to be taken are located, the appointment of three appraisers to ascertain the compensation to be made such owner or person interested. Upon the receipt of such petition the Commissioners are required to give at least thirty days' notice prior to the appointment of said appraisers, stating that such appraisers will be appointed on a certain day. The appraisers are required to qualify by taking an oath. They are to hear the proofs and allegations of the parties, to view the premises, and to certify the compensation to be made to the owner, which certificate is to be signed by them or a majority of them, and shall be recorded in the office of the county clerk of the county in which the lands are situated, and, upon payment of the amount so certified, the petitioner shall have the right of way to construct said ditch."

The Court further says:

> "It is insisted that, as the statute makes no provision for notice to the property owner as to the

time or place of the meeting of the appraisers, he is deprived of the right to be heard upon the question of the amount of damages, and for that reason the statutes contravene Secs. 6 and 32 of Article 1 of the Constitution.

These sections of the Wyoming Constitution are as follows:

'Sec. 6. No person shall be deprived of life, liberty or property without due process of law.

'Sec. 32. Private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity, and for reservoirs, drains, flumes or ditches on or across the lands of others for agricultural, mining, milling, domestic or sanitary purposes, nor in any case without due compensation.' "

The Supreme Court said that:

"The owner of property taken from him by virtue of the right of eminent domain is entitled to notice and an opportunity to be heard upon the question of the amount of his compensation can hardly be questioned. The decisions are almost unanimous on that subject."

The Supreme Court then entered upon a consideration of the question whether there was an implied requirement of notice arising from the constitutional provision, and after a very scholarly analysis of all of the cases, the Court reached the conclusion that the statute must provide for notice and that where none is provided, it should not be implied by the Court.

The statute was held to be invalid. In passing, this case is interesting in that the Supreme Court of Wyoming referred to the *Private Road Act* as illustrative of the proper statutory procedure; but the Court did not refer to the Public Road Act for the same or any other purpose.

This case is in strict harmony with the general current of authority that statutory provisions for the taking of land by eminent domain must affirmatively contain all of the necessary constitutional safeguards.

II.

The whole proceedings were void for want of a sufficient petition.

This is the law in Wyoming as elsewhere. In the opinion in the case now under review, the Supreme Court of Wyoming said (Tr. 105, 110):

> "There is in the record a petition, hereinafter termed 'the regular petition' in the statutory form, dated March 21, 1917, filed April 4, 1917, signed only by one signer,—John Mullin. If this were the only petition filed, then since the face of the record itself shows that the statute has not been complied with in the essential requirement that ten qualified electors shall sign the petition, then proceedings would be void."

In our brief of authorities we cite numerous other cases to the same effect.

The facts in regard to this matter are as follows:

The document which was introduced in evidence as a petition consisted of two pages, which at the time of the hearing were physically attached to each other (Tr. 77, 90). The first sheet was the document which we have refered to as "the waiver"; the second page was a petition in the statutory form (Tr. 15, 16). The waiver read as follows:

> "We, the undersigned, being all the owners of land through which the following proposed road will pass, in consideration of the Board of County Commissioners of Platte County, declaring that said County Road, do hereby covenant and agree with said Board

of County Commissioners of said Platte County, Wyoming, that we will each and all of us waive any and all claims to damages for the land taken for such road and for moving fences and building fences, and hereby donate to said county a right of way for such road." Then follows a description of the proposed road and eleven signatures. (Tr. 15.)

The petition (which was on the second page) read in part as follows:

"Wheatland, Wyo., March 21, 1917.

To The Board of County Commissioners,
Wheatland, Wyoming.

The undersigned ask that a public road commencing at a point"—describing it—"be established, said road to be 60- wide.

Respectfully submitted

Names, John Mullin Post Office, Wheatland."

Below this appeared a statement of the road act and a list purporting to be a list of all persons owning land through which the road would pass.

On the trial of the case in the District Court, various controversies of law and fact arose in regard to these documents.

One question was whether the pages were attached or separate when signed by the various persons whose signatures they bore. This question was decided against the Land Company and the Supreme Court declined to disturb the finding.

The next question,—which is the question now under consideration,—is whether the persons who signed the waiver could be regarded in law as petitioners. This question involves the position of their signatures with relation to the text of the two documents and the text of the two documents as indicative of the intention of the signers.

The final question is whether oral evidence could be received to determine the intention and understanding of the persons who signed the waiver. This question will be discussed under a later head.

Our position is that even though the two papers were physically attached at the time the waiver was signed, the persons who signed the waiver did not become petitioners and that there was in fact only one petitioner.

An examination of the Road Act shows with entire certainty that these two papers were prepared and intended for two entirely different purposes. The second page, which we have called the petition, was evidently prepared in the light of the provisions of Section 2516. The language is an exact copy of the statute: "The undersigned ask that a public road" etc.

The waiver, on the other hand, was prepared in conformity with Section 2535. This section obviates the necessity for a petition in cases in which the written "consent of all of the owners of the land" is obtained. The provision is that the written consent of all of the owners of the land is to be filed in the office of the county clerk, whereupon the road may be established by the Board. This section further empowers the Board to receive donations of rights of way and to declare a public road opened whenever the consent of all the land owners has been obtained, either by donations or through an amicable adjustment.

It is perfectly clear that the waiver was prepared and intended to operate under Section 2535. It contained all of the essential elements and was in fact a paraphrase of certain passages in the section. It recites (although untruly) that the persons who signed it were the owners of all of the land through which the proposed road would pass, that they waived all claims for damages, and donated a right of way.

The natural and reasonable presumption is that all of these parties perfectly understood what they were doing. They intended to make the same distinction which the statute makes. Only one chose to become a petitioner; the other ten signed for the purpose of consenting.

The two transactions are not only distinguishable in fact; they are distinguishable in legal character. A land owner who signs a waiver assumes a different legal status from that occupied by a petitioner. With respect to petitioners the statute provides that the Board may require a deposit before proceedings are initiated (Sec. 2517); and the Act further provides that the establishing of a road upon petition may be conditioned upon contributions from the petitioners. (Sec. 2531.) It is true that these obligations are conditional, but the petitioners are at least quasi-parties to the proceeding.

Where the other method is adopted the procedure and the consequences are entirely different. No petition is filed; the whole proceeding is conducted by consent.

Certainly a person who signs a waiver is not a petitioner; and it is equally certain that he does not become one because there is attached to the instrument of waiver another document which has all the elements of a petition.

In addition to all of these considerations there is the obvious fact that the instruments speak for themselves. No man being confronted with the two documents could fail to observe the difference. Neither could anyone who read the documents fail to observe that each refers to the "undersigned." The petition opens "We, the undersigned" etc.; this was unequivocal notice that those who desired to join should subscribe. The persons who signed the waiver did not subscribe the petition. With a free choice they elected to execute the waiver; and we submit that the plain construction of the instrument negatives the theory that the persons who signed the waiver were petitioners.

Apart from this question of intention, there is the additional and legally controlling consideration that by signing the waiver only, the persons whose signatures there appear, did not comply with the Wyoming statute providing for petitions.

The statute (Sec. 2516) requires that the petition "shall be signed by ten or more electors," etc. We are not now referring to the qualifications of these individuals, even though that point is in fact a debatable one. We refer to the rule of law that when the word "sign" is used in a statute it means "subscribe." This has been repeatedly held to be the law.

Ashbrook v. *Roberts,* 82 Ky. 298.
Wade v. *State,* 22 Tex. App. 256.
Catlett, et al. v. *Catlett,* 55 Mo. 330.

We accordingly submit that this petition, which must necessarily be conceded to be jurisdictional, was not signed by the requisite number of petitioners.

III.

Manifest error was committed in permitting the Board to introduce oral evidence for the purpose of indicating the understanding or intention of the persons who signed the waiver.

Error was assigned on the rulings of the Court as to the evidence of various witnesses who were called by the Board and examined in regard to the controversies which they had with the persons who signed the waiver. (Tr. 129, 130, 136; the evidence in question appears at pp. 77, 78 and 81.)

The obvious purpose of this evidence was to show that the persons who signed the waiver understood that they

were signing a petition. This was nothing less than an attempt to modify and amplify the writings by oral evidence.

Evidence tending to modify or amplify the text of instruments was highly improper.

The evidence offered for the Board by which it was attempted to prove by the testimony of some of the signers of the "waiver" the character of the instrument which they signed and what their understanding was at the time they signed the "waiver" should not have been admitted by the Court because such evidence is in violation of the parol evidence rule. Evidence of conversations at the time the "waiver" was signed is not admissible.

In *DeWitt, et al.* v. *Berry, et al.*, 134 U. S. 306, this Court considered a case relating to a written contract for the sale of varnish which provided that the goods were to be exactly the same quality as were made for certain third persons, and as per sample barrels delivered, also stipulating the price on certain varnish and dryer. The Court excluded evidence of an antecedent conversation between the salesman and one of the plaintiffs in error. The Court, at page 315, stated the rule as follows:

> "When parties have deliberately put their engagements into writing, in such terms as import a legal obligation, without any uncertainty as to the object or extent of such engagement, it is conclusively presumed that the whole engagement of the parties, and the extent and manner of their undertaking, was reduced to writing; and all oral testimony of a previous colloquium between the parties, * * * as it would tend in many instances to substitute a new and different contract for the one which was really agreed upon, to the prejudice, possibly, of one of the parties, is rejected." 1 Greenl. Ev. Sec. 275 and authorities cited; *White* v. *Bank*, 102 U. S. 658; *Metcalf* v. *Williams*, 104 U. S. 93; *Martin* v. *Cole, id.* 30.

In *Green* v. *Chicago & N. W. Ry. Co.*, 92 Fed. 873, the Circuit Court of Appeals for the Eighth Circuit considered a contract which was in the form of a release, reciting that a payment then made was for a final estimate of work done and materials furnished, and in full satisfaction and discharge of all claims and liabilities accruing out of said contract. The plaintiff relied on certain testimony as to oral statements of the agent, made prior to the execution of the release, and of his interpretation of its meaning when it was signed. The Court said at page 877:

> "The former tends to establish a parol agreement made before the release was executed, and while negotiations for it were progressing, to the effect that the payment in full for the work done under the contract, including the 10 per cent., should not cancel the original agreement, and evidence its complete execution as it provided; that the final estimate which Green signed should not be a final estimate, but an intermediate one; and that, in essential particulars, the legal effect of the transaction should be contrary to that evidenced by the writings. No rule or principle of law occurs to us under which this testimony could have been admissible. It flies in the teeth of the rule that parol evidence can not be received to contradict or modify written contracts, and of the conclusive presumption that the whole engagement of the parties and the manner and extent of their undertaking, are expressed in their written agreements. (Citing cases.) The testimony as to Blunt's interpretation of the release was equally objectionable. It was when Green was about to sign it that Blunt told him that it did not mean what it plainly read, that it covered nothing but the work up to that time, and that it had no reference to the future, when it expressly provided that he receive the money in full payment and discharge of all work and materials mentioned in the contract, and of all liability of the railway company in any manner arising thereunder. The question which this evidence presents has been repeatedly considered and decided by this Court, and our conclusion upon it has been embod-

> ied in this rule: 'No representation, promise, or agreement made or opinion expressed in the previous parol negotiations as to the terms or legal effect of the resulting written agreement can be permitted to prevail, either at law or in equity over the plain provisions and just interpretation of the contract, in the absence of some artifice or fraud which concealed its terms, and prevented the complainant from reading it.' "

In view of the familiarity of the rule we deem it unnecessary to cite any more cases.

CONCLUSION.

This proceeding evidently worked a great injustice to the Land Company. The transaction was consummated with very little regard for our rights. Our land was taken without compensation on the theory that the benefits to our remaining land exceeded the value of the land taken; but we had no opportunity to be heard on this question, which included the question whether our land in two separate parcels was as valuable as our land in a single parcel, and the question whether the increase in benefits was adequate to provide for the cost of fencing, which the establishment of the new road required. But this Court has decided that in a proper case benefits to the land not taken may constitute just compensation for the land taken, and we do not seek to reopen that question.

We place our case on each of the three propositions which we have argued:

First. That irrespective of anything that was or was not done in connection with the opening of this road, the

whole proceeding is a nullity because the Wyoming Road Act contravenes the due process clause of the Constitution of the United States;

Second. That the whole proceeding from its inception were a nullity because there was no such petition as the Wyoming statute requires;

Third. That there was manifest and prejudicial error in receiving oral evidence for the purpose of changing the unequivocal character and plain intent of a written instrument.

We submit that the judgment of the Supreme Court of Wyoming should be reversed.

Respectfully submitted,

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